

BorgWarner's Appendix of Summary Judgment Exhibits

Exhibit 21

1 Deposition of International Union, United Automotive,
Aerospace & Agricultural Implement Workers of America
(Dec. 16, 2011) (Michael Ailes)

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

-----: **ORIGINAL**
WILLARD L. SLOAN, EUGENE J. :
WINNINGHAM, JAMES L. KELLEY, on :
behalf of themselves and a :
similarly situated class, :
Plaintiffs, :

vs. :

Case No.: 09-cv-10918

BORGWARNER, INC., BORGWARNER :
FLEXIBLE BENEFITS PLANS and :
BORGWARNER DIVERSIFIED TRANSMISSION: :
PRODUCTS, INC. :
Defendants. :
-----:

Detroit, Michigan

Monday, December 16, 2011

The Deposition of MICHAEL AILES, called by the Defendant for examination, taken pursuant to the provisions of the Code of Civil Procedure and the Rules of the United States District Court, Eastern District of Michigan, Southern Division to the taking of depositions, taken before QUENTINA R. SNOWDEN, CSR-5519, Notary Public for the County of Genesee, Acting within the County of Wayne, State of Michigan, Certified Shorthand Reporter within and for the State of Michigan, at Miller, Canfield, Paddock and Stone, PLC, 150 W. Jefferson Avenue, Suite 2500, Detroit, Michigan 48226 on the 16th day of December 2011 at 9:49 a.m.

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5 By Mr. Burchfield

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25

1 P R O C E E D I N G S

2 MICHAEL AILES

3 called as a witness, and having been first duly
4 sworn, was examined and testified as follows:

5 EXAMINATION BY COUNSEL FOR DEFENDANT

6 BY MR. BURCHFIELD:

7 Q Would you please state your name.

8 A Michael Ailes.

9 Q And what is your current business address,
10 Mr. Ailes?

11 A 5850 Fortune Circle West, Indianapolis, Indiana.

12 Q And is your residence address in that same area?

13 A No.

14 Q Where do you reside?

15 A I reside in Muncie, Indiana.

16 Q And what's your address in Muncie?

17 A 3809 West County Road, 1275 North, Muncie, Indiana.

18 Q Okay. And what's your educational background?

19 A High school.

20 Q Could you just briefly describe your work history
21 since high school?

22 A I've had a variety of things from working in
23 concrete, to factory work when I started with
24 BorgWarner. I've done everything from cut gears,
25 machining, to trucking, to labor. I guess my --

1 also as a union official for the local union.

2 Q When did you start with BorgWarner?

3 A 1983, September 19th.

4 Q And were you working at the Muncie Plant?

5 A Correct, yes.

6 Q What was your first position there?

7 A As material handling, taking material in and out of
8 different departments that were done with
9 production.

10 Q How long did you continue working full-time for
11 BorgWarner working in Muncie?

12 A Until 2000.

13 Q What happened in 2000?

14 A I was asked to become International rep for Region 3
15 UAW.

16 Q Okay. And do you remain with the UAW today?

17 A Yes.

18 Q What's your current position with the UAW?

19 A I'm assistant director of Region 3.

20 Q What is the geography that Region 3 covers?

21 A It covers Indiana and Kentucky.

22 Q Who do you report to at the UAW?

23 A Director Mo Davison.

24 Q Prior to going to the International Union, did you
25 hold positions with Local 287?

1 A Yes, I did.

2 Q And what positions did you hold with Local 287?

3 A I was steward, committeeman, recording secretary for
4 the committee and chairman of the Bargaining
5 Committee.

6 Q Can you give me some time frames associated with
7 each of those starting with steward?

8 A I started steward in 1990. I was elected to
9 committeeman in May of 1991. I become -- I was also
10 a committeeman from '92, plus recording secretary
11 from '92 to '93. In '93 I become chairman of the
12 Bargaining Committee for the Local. I served in
13 that capacity until '97. '97, I was out for a year
14 organizing for the UAW on a temporary basis. I come
15 back in '98, was reelected to bargaining chair
16 position. I served in that position until I left in
17 2000.

18 Q Which collective bargaining cycles at BorgWarner did
19 you serve as chairman of the Bargaining Committee
20 during?

21 A '95 -- '95 as the chairman. I was in the others,
22 but not as chairman.

23 Q Okay. But not '98?

24 A No. '98 was when I was on my temporary organizing.

25 Q Okay. What is the current status of Local 270 --

1 Local 287?

2 A It's no longer there. The plant closed, and with
3 that so did the Local.

4 Q Okay. And there is I think a Local 270 (sic)
5 Retired Workers' Chapter, are you familiar with
6 that?

7 A Not with 270. Now there's a 287 Retiree Chapter.

8 Q Okay. So there's a Local 287 Retiree Chapter.
9 What's the status of that?

10 A It's still functioning.

11 Q Okay. And what is the -- and what is the function
12 of a Retired Workers' Chapter?

13 A A variety of things. I guess it's a kind of a
14 social gathering for retirees. Sometimes they'll
15 put on programs. They may have somebody come in
16 like for dental with toothbrushes, or they may have
17 somebody come in to say -- put on a little program
18 about, you know, what to look out for for heart
19 attack and strokes and informational sharing.

20 Q Okay. Does it have -- what is it, its level of
21 affiliation with the International UAW?

22 A Well, not -- I guess not really much. I mean, it --
23 I guess I don't -- I know that exact -- they don't
24 report to the International or nothing, but they're
25 still bound by -- their bylaws is usually in

1 conjunction with.

2 Q Do they -- do they receive any funding from the
3 International, to your knowledge?

4 A No.

5 Q Do they pay -- do the members of the Local Chapter,
6 Retired Workers' Chapter pay dues to the Local
7 chapter, if you know?

8 A Some of them do. It's on a voluntary basis. It's a
9 reduced amount. But yes, that does happen.

10 Q They pay dues to Local chapter or to the
11 International?

12 A I believe it goes to the International. I'm not
13 real familiar with that piece of it, because that's
14 the administrative part of it, and I've never really
15 been in administration. I've always been
16 bargaining.

17 Q Okay. Could you just describe for me what your
18 current responsibilities are as assistant director
19 for Region 3?

20 A Well, I oversee clerical at the regional office. I
21 assist servicing reps in their daily assignments. I
22 assist the director on various tasks. Sometimes I'm
23 called to go in and finish up bargaining on a
24 contract. I guess a variety -- I mean --

25 Q Do you participate in collective bargaining?

1 A At times I have, yeah.

2 Q And are there circumstances that do define when you
3 do participate in a collective bargaining versus
4 when you do not?

5 A Yes. A lot of times it's at the request of the rep
6 or it may be depending on where they're at in
7 bargaining, where they need the assistant director
8 in, particularly if it's -- looks like it's going to
9 go to a strike, they would call me in on that; or if
10 it's a plant closing, they would call me in; or if
11 one of the reps, heaven forbid have a heart attack,
12 they would call me to go finish that up or go in and
13 take care of that.

14 Q On an annual basis, about how many times would you
15 say you personally participate in collective
16 bargaining negotiations today?

17 A Maybe six, eight times.

18 Q Okay. And all of those are within the Indiana,
19 Kentucky area?

20 A Correct.

21 Q And is the -- is the Region 3 office at the address
22 in Indianapolis that you gave us earlier?

23 A That's correct.

24 Q And what -- do you -- does -- I think you said your
25 direct boss is Mr. Davidson (sic). Is he also in

1 Indianapolis?

2 A Yes. Davison, D-A-V-I-S-O-N.

3 Q Okay. Thank you for that clarification. And to
4 whom does -- does -- well, let me start again.

5 Does Region 3 report to someone here in
6 Detroit at Solidarity House?

7 A Yeah, the director would report, I'm assuming, to
8 Bob King, the president of International.

9 Q Okay. And what ongoing responsibilities, reporting
10 responsibilities, do you have into Detroit, if any?

11 A Not as much. I mean, it may be if -- depending on
12 if a vice president needs a name, or if they were
13 going to call somebody out of a Local, it would be
14 my job to report that, who that person is, has that
15 person been okay'ed to go out, that kind of thing.

16 Q Okay. But on a day-to-day, week-to-week basis, you
17 report to Mr. Davison and you stay pretty much
18 within the organizational structural of Region 3?

19 A For the most part, yes.

20 Q And who makes the decision as to when you become
21 involved in collective bargaining negotiations?

22 A Well, that varies I guess. Normally it would be the
23 director, or he tells me -- if someone was to call
24 me, a rep would call me, I would make that decision
25 on my own to go in.

1 Q But that decision is also made within -- within
2 District 3, Region 3?

3 A That's correct. Now, from time to time there are
4 requests made from Detroit, but that's not real,
5 real often, depending on what the circumstances
6 are.

7 Q And what would be a circumstance in which a decision
8 like that would be made from Detroit, as opposed to
9 within the Region?

10 A If they had a new Local and it reported to one of
11 the vice presidents, they may ask to have me go in
12 or maybe even the director to go in, to initially
13 sit down and see -- get going in the right
14 direction, I guess.

15 Q Okay. Now, since you've been with the International
16 UAW -- and I think you said that was in 2000?

17 A Correct.

18 Q -- has the International UAW paid your salary?

19 A Yeah, that would be correct.

20 Q And your benefits?

21 A That's correct.

22 Q Do you currently received any salary or benefit
23 payments of any type from BorgWarner?

24 A No.

25 Q Do you participate in any BorgWarner health plans

1 now?

2 A No.

3 Q When was the last time that you participated in a
4 BorgWarner plan?

5 A Probably when I left the plant in 2000.

6 Q Okay. Are you -- do you consider yourself eligible
7 to participate in any BorgWarner retirement plans?

8 A Since the plant closed?

9 Q Yes.

10 A I would say no, because they done closed that
11 agreement that prohibits me from doing that now.

12 Q Do you consider yourself eligible at any point to
13 participate in any BorgWarner health plans?

14 A Not at this point, no.

15 Q Within the last year, what collective bargaining
16 negotiations have you participated in personally?

17 A Kentucky, there was a close-out agreement that I
18 participated in and finished up.

19 Q I'm sorry, in where?

20 A In Kentucky.

21 Q Yep. In Kentucky. And what -- who was the
22 employer?

23 A Oh, you'd ask me that. I think it was 3047. I
24 think it was in -- it was a Danville plant, I
25 believe. I mean, I'm involved in so many different

1 ones, it's hard to keep them all track (sic), to be
2 honest with you.

3 Q Well, which ones do you -- which employers were you
4 involved with collective bargaining negotiations
5 with, to the degree you can recall the names of
6 employers?

7 A AM General, South Mint (ph), the one I just
8 mentioned. Probably -- maybe Johnson Controls to --
9 to a point. Let's see, probably Coupled Products
10 somewhat, more by phone than being at the bargaining
11 table with them, but by phone. That may be it at
12 this point. I mean what I can remember of them.

13 MR. BURCHFIELD: Okay. Let me ask the
14 reporter to mark as Ailes Exhibit 1 a document
15 entitled "A subpoena to produce documents."

16 (Ailes Deposition Exhibit Number 1 was
17 marked for identification.)

18 BY MR. BURCHFIELD:

19 Q Mr. Ailes, this is the version of that document the
20 reporter has marked. And let me just hand it to you
21 and ask you if you've seen that document before?

22 A Yes.

23 Q And can you describe the circumstance in which you
24 saw that document?

25 A It was mailed to me. I received it in the mail.

1 Q Okay. Did you have any role in the -- in the effort
2 by the UAW, International UAW to comply with the
3 document requests specified in that subpoena?

4 A I guess I -- I guess I don't understand what you're
5 asking me there, I guess.

6 Q Okay. Bad question. I'll rephrase. And if at any
7 point you don't understand my question, and that
8 will happen throughout the day, just say so and I'll
9 try to rephrase it.

10 Did you have any responsibility for
11 collecting documents in response to this subpoena?

12 A I was asked did I have any documents.

13 Q Okay.

14 A Okay. But I believe those had already been turned
15 over, as far as I know.

16 Q And were you asked if you knew where documents
17 formerly held by Local 287 were located?

18 A Yeah.

19 Q And do you know where Local 287 documents are
20 currently stored?

21 A Well, right now the only documents that they really
22 have would have been from the closeout. Any
23 documents beyond that, would have been kept -- some
24 were kept in the plant, some were kept at the hall.
25 But I don't know where it went from there.

1 Q Any -- who -- if you were looking for those
2 documents, who would you ask?

3 A I guess I'd try to figure out who the -- depending
4 on what time period, who the recording secretary was
5 and where they might have them kept.

6 Q Insofar as documents produced from the International
7 UAW, were -- to your knowledge, were there any
8 searches for documents made at the Region 3 offices
9 in Indianapolis?

10 A Yes, there was.

11 Q And who was primarily involved in that search?

12 A Me.

13 Q Okay. And what -- can you describe what you did in
14 connection with that search?

15 A I went to a file now that they call -- they got an
16 area where they go, closed Locals, and they had a
17 box marked 287, and I opened it up and seen what was
18 inside.

19 Q Okay. Were there -- did you send those documents to
20 someone to review?

21 A No.

22 Q Was there anything in there that you found
23 responsive to this subpoena?

24 A No.

25 Q Can you describe what was in that box, what type of

1 documents were in that box?

2 A There was some contracts, books from previous years,
3 like I think there might have been -- I know there
4 was a '95 agreement in there. There might have been
5 an '89 agreement in there. Might have even been
6 some old grievances, but that was about it.

7 Q Were there notes from the collective bargaining
8 negotiations?

9 A No, there were not.

10 Q Any correspondence of any type, letters back and
11 forth?

12 A Not that box, not the box I looked at, at the
13 Regional office.

14 Q To the best of your knowledge, are there any other
15 documents related to Local 287 there in the
16 Indianapolis office?

17 A Not that I'm aware of.

18 Q Okay. And did you -- did you make sufficient
19 inquiry to reach a high level of confidence that
20 there are no other documents there?

21 A Yes, sir. Yeah, absolutely.

22 Q And so, you're able to testify today that to the
23 best of your knowledge there aren't any other
24 documents related to Local 287 there in the office
25 other than that one box?

1 A That would be correct.

2 Q With respect to documents relating to -- that were
3 requested by the subpoena that might be in Detroit,
4 did you have any involvement in the search for those
5 documents?

6 A No. No.

7 Q Do you know who did?

8 A No, I don't.

9 Q How are -- how are documents kept -- how are they
10 filed at the Region 3 headquarters? Are they filed
11 by Local, are they filed by --

12 A By Local.

13 Q Okay. And for -- in situations like 287 where the
14 plant is no longer open, is there a policy about
15 whether or not to keep documents from plants that
16 are no longer open?

17 A There's a policy. What you run into is sometimes
18 there's not documents forwarded to the Regional
19 office from a particular Local, whether it be 287 or
20 any other Local.

21 Q And if the Region headquarters has documents from a
22 closed -- from a Local involving a closed plant, are
23 those documents disposed of or are they just kept
24 indefinitely?

25 A They're kept. They're kept. I mean, for a period

1 of time, you know, especially if there is a
2 financial -- especially if there is any financial
3 records.

4 MR. BURCHFIELD: Let me ask the reporter to
5 mark as Ailes Exhibit 2 another subpoena. This one
6 is a subpoena to testify.

7 (Ailes Deposition Exhibit Number 2 was
8 marked for identification.)

9 BY MR. BURCHFIELD:

10 Q Mr. Ailes, I'm handing you Ailes Exhibit 2. Have
11 you seen that document before?

12 A Yes.

13 Q And in what context did you see that document?

14 A I can't remember if this was mailed to me. I just
15 remember I know I've seen it, so -- but I can't
16 exactly tell you whether it was mailed to my home,
17 mailed to the office.

18 Q Let me ask you to look at the last page of that
19 document, which has the heading at the top
20 "attachment."

21 A Uh-huh.

22 Q And that it has nine categories, numbered categories
23 there. Do you see those?

24 A Yes.

25 Q Now, it is my understanding that you are appearing

1 today on behalf of the International UAW as a
2 witness to testify about those nine categories of
3 information.

4 A Uh-huh.

5 Q Is that your understanding as well?

6 A Yes.

7 MR. MACEY: Excuse me, may I interrupt at
8 this point?

9 MR. BURCHFIELD: Sure.

10 MR. MACEY: And just for the record, I've
11 had conversations with your partner Mr. Rogaczewski
12 about this document, and in those conversations, Mr.
13 Rogaczewski indicated that with respect to request
14 one, although that is generally framed, it really
15 was intended to apply only to BorgWarner, not to
16 other employers.

17 And with respect to question nine, I've
18 advised Mr. Rogaczewski that Mr. Ailes is -- is
19 not -- we are not presenting him with respect to
20 nine. That we are producing documents that have
21 been gathered from the Detroit offices, and if based
22 on the review of those documents you want a witness
23 produced, we'll make another witness available. I
24 just wanted to qualify that -- the general.

25 MR. BURCHFIELD: Okay. Well, we -- we

1 would like a witness with regard to number nine, and
2 so, we don't have to talk about the scheduling now,
3 but at some point we should.

4 MR. MACEY: Okay. That's fine. That's
5 fine.

6 BY MR. BURCHFIELD:

7 Q So Mr. Ailes, are you today prepared and willing to
8 testify about specification one insofar as your
9 Counsel has described it, as well as categories two
10 through eight of these specifications?

11 A Yeah, to the best of my ability, yes.

12 Q Okay. And what have you done, prior to the
13 deposition today, to prepare to testify about those
14 categories?

15 MR. MACEY: I'm going to object to that
16 request -- or that question on the grounds that
17 it's -- would infringe the work product and
18 attorney/client privilege.

19 BY MR. BURCHFIELD:

20 Q Let me ask the question slightly differently. What
21 have you personally done to assure yourself that
22 you're ready to testify with regard to categories
23 one through eight?

24 MR. MACEY: You can answer to the extent
25 that you don't reveal any conversations that you've

1 had with counsel.

2 THE WITNESS: I guess just going through my
3 mind the times that I was involved in these -- the
4 different negotiations, and I probably -- I looked
5 over the '92 agreement, because I had a copy of that
6 at home.

7 BY MR. BURCHFIELD:

8 Q Other than the '92 agreement, did you review any
9 documents in preparation for the deposition today?

10 MR. MACEY: I'm going to lodge an objection
11 here on the grounds that it would invade the
12 attorney/client privilege and the work product
13 privilege. You don't have to answer that.

14 MR. BURCHFIELD: Well, in a 30(b)(6)
15 context I think that's an unusual objection. I've
16 never heard it before, but we don't need to debate
17 that today.

18 BY MR. BURCHFIELD:

19 Q Well, Mr. Ailes, I'm going to ask you questions
20 about these categories, and you understand that the
21 testimony you give today is binding on the UAW as --
22 with respect to those categories, right?

23 A Uh-huh. Yes.

24 MR. BURCHFIELD: I'd ask the reporter to
25 mark as Ailes Exhibit 3 a declaration submitted by

1 Mr. Ailes in this case dated April 15th, 2009.

2 (Ailes Deposition Exhibit Number 3 was
3 marked for identification.)

4 BY MR. BURCHFIELD:

5 Q Mr. Ailes, I'm handing you Deposition Exhibit 3.

6 And do you recognize the document -- there's a cover
7 page on there which you may not have seen before,
8 but do you recognize the document under that cover
9 page as a declaration that you executed in April of
10 2009?

11 A I believe so.

12 Q Okay. And this -- and in reviewing this declaration
13 today, is there anything in it that you would like
14 to change in any way?

15 A Let me read it here.

16 Q Okay.

17 A (Reviewing.)

18 Q Have you now had a chance to review Exhibit 3?

19 A Yeah, I'm just about done. Yeah, I'm all right.

20 Q And again, is this -- does this remain true and
21 accurate to the best of your knowledge?

22 A Yeah, to the best of my knowledge.

23 Q This reports in paragraph five that you were
24 involved in the negotiation with BorgWarner in 1992,
25 1995, 2000, 2005 and 2008; is that correct?

1 A That's correct.

2 Q Okay. And you -- you indicate that the main
3 bargainer in '92 and '95 was Laura Hess for the UAW,
4 correct?

5 A Uh-huh.

6 Q And for BorgWarner in '92 and '95 was George
7 Turczynowsky?

8 A Yeah, the best I can remember, yes.

9 Q Is it your recollection that Mr. Turczynowsky was at
10 the bargaining table in '92 and '95?

11 A Yeah. He wasn't there every day.

12 Q Was he -- was he doing the negotiating or was he
13 serving as an advisor? If you recall?

14 A Well, I guess that's kind of a toss-up, because
15 the -- I think he did a little bit of both, whether
16 he meant to or not.

17 Q Was Ms. Hess there every day?

18 A '92, I believe -- any day that we were meeting with
19 the company, I believe she was. I mean, that was
20 1992, but I believe so.

21 Q How about in '95?

22 A In '95, not every day, but most days, yes.

23 Q And did she actively participate as a speaker during
24 the negotiations?

25 A Yes.

1 Q During -- at the table?

2 A Yes, she had, yes.

3 Q Do you recall whether Mr. Turczynowsky actively
4 participated as a speaker during the negotiations?

5 A I believe he did. I believe he did.

6 Q Do you -- do you have a clear recollection one way
7 or the other?

8 A Well, I mean, he spoke, but I don't know what
9 capacity, it's just like anything when you get a
10 group of people and somebody says something, I mean,
11 that happens sometimes when they're not supposed to.

12 Q Who was the lead negotiator on the Union's side
13 during the '92 negotiations?

14 A For the Local would have been LaRue Cross.

15 Q And he was -- LaRue Cross was for Local or --

16 A The Local. He was the chairman for the bargaining
17 committee.

18 Q Right. And then the International, who would have
19 been the lead?

20 A That would have been Laura Hess.

21 Q Okay. And how about BorgWarner, who was lead
22 negotiator in '92?

23 A I guess John Daffara.

24 Q In '95, who was the lead -- who were the lead
25 negotiators for the Union side, Local and

1 International?

2 A '95 actually I was with the help of Laura. And for
3 BorgWarner would have been John Daffara.

4 Q In paragraph nine, you say, during the 2000
5 negotiations the persons who were most involved in
6 bargaining over benefits issues were Mr.
7 Turczynowsky and Tony Behrman. Who were the lead
8 negotiators for the Union in 2000?

9 A That would have been probably LaRue Cross for the
10 Local.

11 Q And for the International?

12 A It had to have been Laura, I would think. I'm not
13 for sure.

14 Q And how about for BorgWarner?

15 A In 2 -- probably would have been Tony Behrman.

16 Q Do you have a clear recollection that Ms. Hess was
17 involved in the 2000 negotiations on benefits
18 issues?

19 A I believe she did, but I mean, I don't have -- I
20 can't tell you exact dates. Just she would have
21 been the go-to person for LaRue.

22 Q What about in 2005, who was the lead negotiator for
23 the Local in 2005?

24 A That would have been -- I think Jeff Fallis. He was
25 the chair of the bargaining committee at the time.

1 Q And can you, for the reporter's benefit, spell the
2 name?

3 A The last name?

4 Q Yes.

5 A F-A-L-L-I-S, I believe.

6 Q Okay. And who was the lead negotiator in 2005 for
7 BorgWarner?

8 A That's -- well, I guess it would end up being -- if
9 you want to call them that, I guess it would have
10 been Dave Campbell.

11 Q Who was the lead negotiator for the International in
12 2005?

13 A Probably been myself.

14 Q Modesty is not required here.

15 A Oh, well -- I'm just trying to be truthful, I mean.

16 Q That's the point. Okay. And in 2008, who was the
17 lead negotiator for the Local?

18 A To be honest with you, I'm trying to think who that
19 was in 2008. It's -- because I'm thinking Fallis
20 was gone. I can't remember if it was Dick Thomas
21 who was the chair along with myself, because it run
22 together. Might have been -- at one time they
23 changed chairmans (sic), so that's why it's kind of
24 hard for me to remember who -- like we went from one
25 chairman to another chairman during that time.

1 Because that would have been the close-out
2 agreement, I'm assuming. I was involved in it, Dick
3 Thomas was at one time and possibility of a guy
4 named Gardner (ph) might have been, Todd Gardner.

5 Q Who -- I'm sorry, say that again.

6 A Todd Gardner.

7 Q Todd Gardner. Okay. And who was the lead
8 negotiator for BorgWarner on the 2008 negotiations?

9 A It might have been -- probably Czerwonka, I think.
10 At one time they shuffled people in and out quite a
11 bit, so --

12 Q And the 2008 negotiations were looking toward
13 closing the plant?

14 A Yeah. I think that's -- because they already made
15 the announcement, so I believe that's when --
16 because that was a long, drawn-out process, ended up
17 being a long, drawn-out process.

18 Q You -- you say in paragraph four of your affidavit
19 in the last sentence, "I am on Union leave from
20 BorgWarner"?

21 A Correct.

22 Q And what is the significance of that, in your view?

23 A It just means that -- they're not going to fire me
24 from being absent from the plant. We have a
25 provision in the contract that allows me to be on

1 Union leave to do this job, and my seniority carried
2 on.

3 Q Is it -- and I understand this is somewhat
4 hypothetical. But is it your understanding that if
5 you were to decide to leave your position at the
6 UAW, you would have a job waiting for you at
7 BorgWarner at this point?

8 A Well, there's no BorgWarner there right now. I
9 mean, if you're talking hypothetically, I guess if
10 the plant was still there, absolutely. But now that
11 the plant is gone, no, there's nowhere to go to.

12 Q In paragraph 12 of your declaration, you say, "The
13 work that was performed at the Muncie Plant will be
14 done at BorgWarner's plant in North Carolina or at
15 its plant in China."

16 Do you see that?

17 A Yeah.

18 Q And what's the basis for your -- for those
19 statements?

20 A Because that's what the company indicated to us.

21 Q Did it say North Carolina or South Carolina?

22 A They had a plant in Seneca, so I don't know if it
23 was -- so I'm assuming it was North Carolina, but
24 I'm not -- I mean, I don't know.

25 Q Did you understand they were sending the work to the

1 Seneca plant?

2 A Part of it, was my understanding.

3 Q And then in paragraph 13, you say, "There will be no
4 facilities, no management representatives and no
5 benefits office."

6 Do you know the current status of the
7 benefits office in Muncie?

8 A Yeah, I think they still have it going.

9 Q Okay. Are you aware of any announced closure of the
10 benefits office in Muncie for BorgWarner?

11 A They've not announced it. It was my understanding
12 that it would go for a little bit and then they was
13 going to do away with it. But I'm not -- nobody's
14 informed me that's gone.

15 Q Who told you that the benefits office would be --
16 would be closed? What's the basis for the statement
17 there in paragraph 13?

18 A Based on the negotiations when we was doing the
19 plant closing agreement. That was stated by
20 Czerwonka or one of -- on their side of the table.

21 Q And then in paragraph 18, you say "Appearing in
22 southeastern Michigan is not an inconvenience to
23 me." Are you -- you understand that one of the
24 purposes of this affidavit -- of this declaration
25 was to support the Class Plaintiffs' filing of a

1 lawsuit here in Detroit?

2 A Okay.

3 Q As opposed to in Indiana?

4 A Okay. I mean, I -- I guess I don't understand your
5 question. You're asking me do I know --

6 understanding I come up here quite a bit, that's
7 what the basis of this statement, because from time
8 to time I have to come up into Detroit.

9 Q Okay. And you know the case is currently pending
10 here in Detroit?

11 A Yes, I do know that.

12 Q And are you willing to come to Detroit to testify if
13 that becomes necessary?

14 A Yes.

15 Q In court?

16 A Yes.

17 Q Okay.

18 THE WITNESS: Can we take a break for a
19 minute? I need to respond to this. Someone's
20 trying to get ahold of me real bad.

21 MR. BURCHFIELD: Sure.

22 THE WITNESS: Sorry about that.

23 (Off the record at 10:31 a.m.)

24 (Back on the record at 10:39 a.m.)

25 MR. BURCHFIELD: Okay. Let me ask the

1 reporter to mark as Ailes Exhibit 4 a document
2 entitled "Answers to Defendant's First Set of
3 Interrogatories to Class Plaintiffs."

4 (Ailes Deposition Exhibit Number 4 was
5 marked for identification.)

6 BY MR. BURCHFIELD:

7 Q Mr. Ailes, you have in front of you now Ailes
8 Exhibit 4. Could you take a second and just thumb
9 through this and let me just know if you've ever
10 seen it before?

11 A (Reviewing.) I don't know that I have. I don't
12 know if I have seen this or not.

13 Q Okay. And let me ask you to look at -- I didn't
14 know whether you had or not, so I have -- I don't
15 have any reason to suspect that you have. Let me
16 ask you to look at the bottom of page 3, the answer
17 to interrogatory 2. And you'll see there, at the
18 very bottom of the page, single-spaced in the first
19 line you'll see your name listed as a person who
20 supplied information in response to these
21 interrogatories. Do you see your name there?

22 A Yeah.

23 Q Do you recall some time around the early part of
24 2010, being asked some questions related to this
25 lawsuit by one of the attorneys, Mr. Radtke or one

1 of his colleagues?

2 A I'm sure I was. About the time frame, I mean --

3 Q Okay. Do you recall anything -- do you recall any
4 details about information that you may have provided
5 to -- to Mr. Radtke during those discussions?

6 A Well, if I would have been it probably would have
7 been related to my involvement with the
8 negotiations, particularly '92, '95, and the ones I
9 was at the table at.

10 Q Do you recall anything more specific about those
11 discussions?

12 A I mean, that's a broad -- that's pretty broad. I
13 mean, I don't know what you're trying to narrow it
14 down to.

15 Q Well, let me ask it more precisely.

16 A Okay.

17 Q Do you recall discussions with Mr. Radtke about --
18 about the substance of negotiations in 1992
19 concerning health benefits?

20 MR. MACEY: I'm going to object to the
21 question, because in this case there's a common
22 interest privilege between the UAW and the Plaintiff
23 Class. And so, any communications between Mr. Ailes
24 and Mr. Radtke would be privileged.

25 MR. BURCHFIELD: Even for purposes of

1 providing information in response to
2 interrogatories?

3 MR. MACEY: Well --

4 MR. BURCHFIELD: If there were a privilege,
5 it's waived by the fact that the information has
6 been provided in response to interrogatories.

7 MR. MACEY: Well, except that you don't
8 know what the substance of the communication was.
9 In other words, Mr. Radtke talked, as the
10 interrogatory indicates and --

11 MR. BURCHFIELD: I don't think you can use
12 the privilege quite that way. You can't -- you
13 can't use it in responding to -- you can't interview
14 witnesses and respond to interrogatories and then
15 claim privilege for anything that the witness says
16 during that investigation. That just -- that would
17 be very odd.

18 MR. RADTKE: I assert the same objection.
19 And the interrogatories answer the questions that
20 were asked of the Class Plaintiff. How that -- but
21 I can have a discussion with someone, with Mr.
22 Ailes, and it's not discloseable except as in
23 response to interrogatories that you've asked him or
24 about the facts that you've -- that you are able to
25 ask him questions about.

1 MR. BURCHFIELD: Well, we don't -- we're
2 probably not going to resolve this here today, but I
3 just want to make sure I understand your position.

4 Your position is that whenever Mr. Ailes,
5 not a client of yours, has a conversation with you
6 or anyone from your office, that you have -- that
7 you can assert a common interest attorney/client
8 privilege with regard to that conversation?

9 MR. RADTKE: Yes.

10 MR. BURCHFIELD: Is that your position?

11 MR. RADTKE: That's correct.

12 BY MR. BURCHFIELD:

13 Q Mr. Ailes, in -- could you turn, please, to page 11
14 of these interrogatories? And I'm looking at
15 interrogatory number 7 and the question there which
16 you can read. But just for the record it says, "Do
17 you claim that BorgWarner or its employees or its
18 representatives, either with or without personal
19 knowledge, made any admission with respect to the
20 matters alleged in your amended complaint."

21 And then it says if so, and requests some
22 detail. Do you see that?

23 A Uh-huh.

24 Q I'm sorry, you'll have to answer --

25 A Yes.

1 Q Okay. Thank you. And then the answer -- the answer
2 it refers to interrogatory four and then it says,
3 "In the 1995 contract negotiations --" and you were
4 involved in the 1995 contract negotiations, right?

5 A Yes.

6 Q It says, "Director of labor relations Glen Eckelman
7 told Union negotiators that retirees knew what their
8 benefits were when they retired and they were not
9 going to be changed."

10 A Uh-huh.

11 Q "The witness to Mr. Eckelman's admission were
12 members of the company and the Union negotiation
13 teams in 1995."

14 Do you see that?

15 A Yes.

16 Q Do you recall Mr. Eckelman saying such a thing?

17 A Yes. He said it quite a bit.

18 Q Okay. Can you tell me -- can you tell me the first
19 time you heard Mr. Eckelman say that?

20 A Probably at his office at the plant.

21 Q And what specifically did he say?

22 A He said that retirees know what they got when they
23 go out, everybody knows that. And that's what they
24 have. That's what he said.

25 Q Did he use the term "vested"?

1 A I don't know if he used the term vested, to be
2 honest with you. He implied it, but I don't know
3 that he used that specific word, to be honest with
4 you.

5 Q Did he use the term "lifetime guarantee?"

6 A It doesn't sound like Glen to use that, but it was
7 implied for sure. I mean, that's the culture we
8 grew up in. When I say "grow up" from -- you know,
9 I mean -- I've been in that plant, you know, my
10 father, my grandfather. I mean, so I've been around
11 that plant for a lot of years and that was just a
12 well known fact.

13 Q And I'm interested, Mr. Ailes, in the precise words
14 Mr. Eckelman -- you heard Mr. Eckelman use.

15 A Okay.

16 Q And I take it that you don't recall him specifically
17 using the term "vested"?

18 A If you're asking me did he use the term vested, I
19 cannot equivocally say yes, he used that
20 terminology.

21 Q And you can't also -- also can't unequivocally say
22 that he used the terminology "lifetime guarantee"?

23 A No, I guess I can't say that neither.

24 Q Did he use the term "inalterable benefits"?

25 A No, I don't believe he said that.

1 Q Other than your recollection of him saying that when
2 retirees retire they know what they've got, do you
3 recall him saying anything else?

4 A Well, you're just picking up a piece of it, because
5 the talk was talking about retiree benefits, okay?
6 The retirees was always wanting something done.
7 That's why in that context Glen said -- Glen
8 Eckelman says, they know what they got when they go
9 out of here, and that's what they live with, and
10 that's it.

11 Q Okay. And that's --

12 A As far as I can recall.

13 Q And is that a paraphrase of what he said or is that
14 pretty much exactly what he said?

15 A You're asking me to go back. I mean -- maybe I -- I
16 can't tell you. I can't answer that. I mean, my
17 recollection of it, what he was talking about is the
18 benefits they had when they retire and when they
19 retire that's what they live with. Now, can I
20 remember back his exact terminology during that
21 period of time, no, because I've had several
22 conversations with Glen over the years, and -- about
23 benefits, and -- whether it be retiree benefits or
24 active benefits, I mean --

25 Q Do you recall Mr. Eckelman, in any of those

1 conversations over the years, ever using the term
2 "vested"?

3 A Well, that's -- if you're asking me has he ever used
4 the word vested during -- I'm going to have to say
5 yes to answer that. Now to what context --

6 Q Can you -- are you -- can you recall any instance in
7 which Mr. Eckelman used the term "vested" in
8 reference to retiree health benefits?

9 A Well, I'm going to have to say yes, but I don't -- I
10 can't tell you -- pinpoint the time. I mean, we had
11 so many damn -- dang conversations about -- watch my
12 language. We had so many conversations about
13 benefits, what it related to retirees, I mean, the
14 ongoing health care situation. I mean, that's what
15 led up to the 19 negotiations.

16 Q Let me ask you to look at the next subparagraph. It
17 says -- and by the way, do you -- did you ever get
18 that from Mr. Eckelman in writing?

19 A No.

20 Q Do you know of any place where the company has
21 written down that retiree health care benefits were
22 lifetime vested?

23 A Absolutely. They used to give it out to them in a
24 pamphlet.

25 Q Okay. We'll look at some of those in a few minutes.

1 But you recall it being clearly stated in the
2 pamphlets that the retiree benefits were lifetime?

3 A Oh, absolutely.

4 Q Pension benefits or health care benefits?

5 A Health care benefits.

6 Q Okay. We'll look at those. In the next paragraph
7 here it says, "In the 2000 contract negotiations
8 with Local 287, Mr. Eckelman told Union negotiators
9 that retirees knew what their benefits were when
10 they retired and they were not going to be changed";
11 in other words, the same wording used for the 1995
12 negotiations. Did you -- are you also a witness to
13 that statement?

14 A Yes.

15 Q And do you recall the context in which he said it in
16 the 2000 negotiations?

17 A Talking about, again, retiree benefits. And I
18 believe it was -- every contract retirees always
19 wanted you to try to do something. And when that
20 issue was brought up, they made that statement. And
21 then from that point forward, we didn't talk about
22 the current retirees as far as those benefits.

23 Q Other than the 2000 negotiations and the 1995
24 negotiations, did you ever hear Mr. Eckelman make
25 such a statement?

1 A In the plant. I mean, when it was me and him
2 talking, or if we was in his office talking about
3 something, because whenever a retiree would go out,
4 you know, or where we were getting ready to go into
5 negotiations, the issue always come up. I mean, the
6 retirees -- because Glen been around -- Glen, he
7 knew some of these guys retiring even though they
8 was on the bargaining unit. I mean, they was
9 considered his friend. I felt like he considered
10 them friends, so they would call him directly. And
11 he would call me, you know, so and so called me --
12 and I can't recall a particular name. And it --
13 once again, he said they know what they got when
14 they go out, that's just the way it is.

15 Q Did anyone else from BorgWarner tell you that
16 benefits were -- that retiree health benefits were
17 effectively vested?

18 A I don't know that terminology that anybody else
19 did.

20 Q Did anybody else in the company tell you -- say
21 something that -- that -- that was in substance the
22 same as what Mr. Eckelman had told you?

23 A I guess, in my opinion, inferred it. Like I go back
24 to the '92 -- that's why the '92 was there. I mean,
25 that was to get rid of the FASB liability for

1 anybody hiring up to '93, that's what the whole
2 thing was about. I mean, you're asking me to -- and
3 I don't mean to -- I just grew up in that culture,
4 and that plant, we knew this is how it was. When I
5 retired, this is what I go out with, and this is
6 what I got. I mean, that's just -- I don't know how
7 to explain in any other way, to be honest with you.

8 Q Okay. Well, and I -- obviously there is a -- there
9 is a dispute about that issue --

10 A And I understand that. I understand that.

11 Q But I'm more -- I'm interested right now in who from
12 the company specifically told you that. You
13 mentioned Mr. Eckelman. Anyone else?

14 A Like I said, I don't know the exact terminology.
15 But in my opinion, it was definitely implied,
16 especially after '92.

17 MR. BURCHFIELD: Okay. Let me ask the
18 reporter to mark as Ailes Exhibit 5, a letter from
19 Mr. Reising of BorgWarner to Mr. Dulaney, chairman
20 of the UAW Local 287 negotiating committee dated
21 August 14, 1989.

22 (Ailes Deposition Exhibit Number 5 was
23 marked for identification.)

24 BY MR. BURCHFIELD:

25 Q Mr. Ailes, I'm handing you what's been marked as

1 Ailes Exhibit 5. Have you seen this document
2 before?

3 A I might have seen it. I mean -- because I come on
4 in '91. I might have seen it then.

5 Q If you look, please, at the second page of the
6 document, under numbered point 2, retired employees
7 and their dependents?

8 A Okay.

9 Q Do you see that? And it says, "The company is not
10 obligated to continue health insurance coverage for
11 retirees and their dependents."

12 Do you see that?

13 A Yep.

14 Q And then the next paragraph it says, "Effective
15 October 1, 1989, the company will discontinue
16 retiree coverage entirely." Do you see that?

17 A Yes.

18 Q Do you read that as being consistent with your
19 understanding of what Mr. Eckelman told you in 1992
20 and 1995?

21 A I guess I don't understand what you're saying,
22 because this appears to say that they don't have to,
23 and that's not what I took out of my conversations
24 with Mr. Eckelman.

25 Q So this -- this statement, as you read it, would be

1 inconsistent with --

2 A If I'm reading this right, it appears it's saying
3 they don't have to do it.

4 MR. BURCHFIELD: Let me ask the reporter to
5 mark as Ailes Exhibit 6, a letter dated August 30,
6 1989 to Mr. Reising from Mr. Sherrick of the UAW.

7 (Ailes Deposition Exhibit Number 6 was
8 marked for identification.)

9 BY MR. BURCHFIELD:

10 Q Mr. Ailes, I'm handing you Exhibit 6. Have you seen
11 this document before?

12 A I can't say that I have.

13 Q If I could refer you to the fourth paragraph of this
14 letter, it says, "Please be advised that it is the
15 UAW's position that the retiree health coverage for
16 UAW represented former employees of the company is a
17 lifetime benefit which may not be unilaterally
18 eliminated or discontinued."

19 Do you see that?

20 A Yes.

21 Q And that's consistent with your understanding of the
22 UAW position's then and now, right?

23 A Correct.

24 MR. BURCHFIELD: Okay. Let me ask the
25 reporter to mark as Ailes Exhibit 7, a letter from

1 Mr. Charles Freeman to Mr. Sherrick dated September
2 12, 1989.

3 (Ailes Deposition Exhibit Number 7 was
4 marked for identification.)

5 BY MR. BURCHFIELD:

6 Q Mr. Ailes, I'm handing you Ailes Exhibit 7. In the
7 second paragraph it says, "We have concluded that
8 the company has the right to discontinue retiree
9 health insurance coverage upon expiration of the
10 collective bargaining agreement."

11 Do you see that?

12 A Yes.

13 Q And that is, at least as written here, that's
14 inconsistent with the UAW's position that you just
15 previously read, right?

16 A That's correct.

17 Q And this statement is inconsistent with your
18 recollection of what Mr. Eckelman told you, correct?

19 A That's correct.

20 MR. BURCHFIELD: Let me ask the reporter to
21 mark as Ailes Exhibit 8 a set of notes, typewritten
22 notes dated March 17, 1992.

23 (Ailes Deposition Exhibit Number 8 was
24 marked for identification.)

25 BY MR. BURCHFIELD:

1 Q Mr. Ailes, I've handed you Ailes Exhibit 8, which is
2 a set of handwritten (sic) notes dated March 17,
3 1992 produced from the files of the United Auto
4 Workers. And I would ask you if you've seen these
5 notes before?

6 MR. MACEY: One clarification. You
7 indicated in your question they're handwritten
8 notes. They're in fact typewritten notes.

9 MR. BURCHFIELD: I thought I said
10 typewritten, but you're right, they're
11 typewritten.

12 THE WITNESS: Have I seen it? Probably say
13 yes, I probably have at one time.

14 BY MR. BURCHFIELD:

15 Q Let me ask you to look at the bottom of the second
16 page which bears the last three Bates numbers 585.
17 The last paragraph says, "This is a copy of Bill
18 Leonard's notes."

19 Who is Bill Leonard?

20 A He was a committeeman at one time.

21 Q For the Local?

22 A Yes, for Local 287.

23 Q "This is a copy of Bill Leonard's notes. It's not
24 been verified by any BorgWarner official. These
25 notes are for the PRB Committee's use only as they

1 continue to investigate."

2 Do you see that?

3 A Yeah. I want to clarify that I don't know that he
4 was on the committee at this particular time,
5 because they had a PRB committee going and he might
6 have been -- I'm sure he might have been part of
7 that, and that may be -- maybe he done it for that
8 study group, I'm not sure.

9 Q Let me ask you to look at the entry on the first
10 page. It's number 3 at the very bottom there. It
11 says, quote "The Union and company still disagree on
12 PRB's as being a life-long benefit", unquote.

13 Do you see that?

14 A Wait a minute. Where are you at?

15 Q Very last entry on the page that --

16 A Oh, okay. I got you.

17 Q Quote "The Union and company still disagree on PRBs
18 --" post retirement benefits, right?

19 A Uh-huh.

20 Q "As being a life-long benefit", right?

21 A That's what that says, yes.

22 Q And this -- these notes are apparently recording
23 that the company and the Union disagreed about
24 whether retiree health care benefits were a lifetime
25 benefit, correct?

1 A I don't know that. I mean, I don't know what -- if
2 it was just a committee. The reason I say this,
3 those committees that were formed out of the 1990
4 ACME agreement to study various things, retirement
5 benefits was just one of them, it's clear that they
6 were not to do any negotiating, they was not to --
7 they didn't have the authority to state any
8 positions. So I don't know if he was doing it in
9 that -- I mean, I don't know what context he was
10 taking them notes. That's what I'm trying to say.
11 If it would have been as part of that committee,
12 then, you know, just to be real honest, it don't
13 mean much to me because at the time he's not
14 speaking for UAW, you know, he's not speaking for
15 the 287. He was maybe speaking as a person on that
16 committee. I don't know if somebody said that to
17 him in that committee, because it was joint. They
18 had company representatives and Union
19 representatives to form these committees to study
20 various -- well, gainsharing is one of them, for
21 example.

22 Q Well, let me ask you this question: You understood
23 Mr. Eckelman to say that when retirees retire, they
24 knew what they got?

25 A Yes.

1 Q Did you ever hear anyone from BorgWarner say that
2 BorgWarner believed retiree health benefits were not
3 lifetime vested and could be changed?

4 A There could have been somebody say it from time to
5 time. I mean, depending on who was resolving up in
6 HR. I mean the people take different positions when
7 they first come there any way on various things,
8 whether it be that or whether it be how overtime is
9 worked.

10 So I mean, I can't sit here and say did
11 anybody not say that, well, I'm sure probably
12 somebody did at one time say that.

13 Q In your recollection, did BorgWarner officials say
14 more often that the benefits were not vested, or
15 more often that retirees when they retired know what
16 they've got?

17 A If you're asking me, it was more the latter. I
18 mean, I -- I can't recall somebody specifically
19 looking at me and saying, you guys know it's not a
20 lifetime benefit. Now in saying that, I'm not
21 saying in a meeting somewhere somebody couldn't have
22 said that. But nobody ever give me here's
23 officially what I'm saying to you is that we don't
24 think it's a lifetime benefit. I mean, I know
25 that's what they end up believing or saying, but I

1 don't know depending on what time frame you're
2 looking at, I can't specifically remember that
3 piece.

4 MR. BURCHFIELD: Well, let me ask the
5 reporter to mark as Ailes Exhibit 9 a memorandum to
6 you from Laura Hess dated August 5, 1996, subject
7 health insurance agreement with -- with an
8 attachment.

9 THE WITNESS: Okay.

10 (Ailes Deposition Exhibit Number 9 was
11 marked for identification.)

12 BY MR. BURCHFIELD:

13 Q Mr. Ailes, you now have in front of you Ailes
14 Exhibit 9. Do you recall this document?

15 A Yeah.

16 Q When was the last time you saw this document?

17 A I can't answer -- I don't recall. I mean --

18 Q Have you seen it, say, within the last month?

19 A No.

20 Q Okay. What is this document, as best you recall it?

21 A Health -- or insurance booklet -- or health
22 insurance agreement.

23 Q And in particular, I take it it contains Laura
24 Hess's markup of BorgWarner's draft of the health
25 insurance agreement; is that right?

1 A It's what it looks like, I mean --

2 Q And this -- this is addressed to you as a bargaining
3 unit chair Local 287?

4 A Uh-huh.

5 Q Do you see that?

6 A Yes.

7 Q And that is in fact the position you held during
8 the '95 negotiations, correct?

9 A That's correct. That's correct.

10 Q And would it have been the normal process for you
11 to have forwarded BorgWarner's draft agreement to
12 Laura Hess for her review?

13 A I might have. I'm not for sure, and the reason I
14 say that, because there was a lot of going back and
15 forth on trying to get health insurance agreements
16 from both sides. I mean at one time it was argument
17 does corporate have it, is it at the International
18 kind of thing. So, I'm assuming I sent her a copy
19 of something up there, okay, but I can't tell you
20 that maybe the company didn't too. I don't know
21 that for a fact.

22 Q Okay. But does this -- does this particular
23 document refresh your recollection that you were
24 having communications with Ms. Hess in 1996
25 regarding the draft health insurance agreement?

1 A I'm sure it was -- I probably was, yes.

2 Q Okay. Let me ask you to look at the page with the
3 last three Bates numbers. Those little numbers you
4 see there in the corner.

5 A Okay.

6 Q It has 1021, last four digits. And it's a little
7 bit confusing. There are two numbers on each page.
8 One of them will be 1004 always, and then there are
9 others that are -- that have -- that go
10 sequentially. Do you have the page that has 1021 on
11 it?

12 A Yeah, UAW 001021?

13 Q Yes, exactly. You see there at the bottom of
14 that -- of that page you see Section 2 is circled in
15 dark black pen and the question is written, "What
16 does this mean"; do you see that?

17 A Uh-huh.

18 Q Is that a "yes"?

19 A Yes. I'm sorry.

20 Q Okay. Thank you. And Section 2 there says, "Any
21 provision in this agreement or any exhibit attached
22 hereto relating to deductibles and stop loss limits
23 shall survive termination of this agreement. Such
24 provision shall terminate on December 31, 2002
25 unless previously modified and/or extended."

1 Do you see that?

2 A Yes.

3 Q Do you recall discussions during the 1995 collective
4 bargaining negotiations about a -- about
5 continuation of an escalator for deductibles and
6 stop losses?

7 A Well, that's -- was it mentioned in '95? It might
8 have been.

9 Q It was agreed to in '92?

10 A Correct. In '92 it was agreed to for a ten-year
11 period.

12 Q And in your view, why was it necessary -- why would
13 it have been necessary to state that a provision
14 relating to deductibles and stop loss for the health
15 insurance agreement survive the termination of the
16 agreement?

17 A I guess I'm not understanding your question. I
18 mean, why did it extend out past that?

19 Q Yes.

20 A Is that what you're saying?

21 Q Yes.

22 A Because it's what was agreed to in '92. Because
23 when we looked at it in '92, you got to understand
24 we was trying to -- we was trying to fix some
25 things. We was trying to make best benefits we

1 could for the active people and future retirees,
2 because we weren't worried as much about the ones
3 that was already out. So it was agreed to go ten
4 years. And we looked at that and we costed it out
5 to see how we would be in ten years. It's that
6 simple.

7 Q Let me ask you to look at the paragraph just below
8 that --

9 A Okay.

10 Q -- which says, On March 12, 1998, this agreement may
11 be terminated, modified, changed, or continued in
12 the same manner as provided in Article 16 of the
13 aforesaid collective bargaining agreement between
14 the parties hereto dated October 27, 1989, as
15 modified by the 1992 agreement."

16 Do you see that?

17 A Yeah. Yes.

18 Q Was it your understanding, having participated in
19 those negotiations, that the health insurance
20 agreement could be terminated, modified, changed or
21 continued as of March 12, 1998?

22 A I guess I don't understand the question because I
23 wasn't there in '98, of course.

24 Q Right. But in '95 -- in the '95 negotiations, at
25 least according to this paragraph, the health

1 insurance agreement could be terminated, modified or
2 changed as -- in three years. Was that your
3 understanding?

4 A No. And I don't know who wrote this or who put this
5 piece here saying that, you know, that last one that
6 you're talking about.

7 Q Do you know -- do you have any explanation for why
8 Ms. Hess would not have flagged that as an
9 unacceptable provision?

10 A No, I -- no, I don't know. I mean, I can't speak
11 for her.

12 Q Did you know that that provision that I just read to
13 you appears in the final agreement?

14 A Based on if you're telling me, I've got no reason to
15 doubt that, but I can't tell you why it wasn't
16 flagged.

17 Q We'll look at that in a minute. Would you look,
18 please, at the page UAW 1139 later in this same
19 document, Exhibit 9.

20 A Okay.

21 Q Under the heading, "Future of the plan."

22 A Yeah. Okay. I see it.

23 Q And it says -- and here there's a big "no", triple
24 underlined beside the provision and it says -- and
25 it says -- and that provision is marked through.

1 Do you see that?

2 A Yes.

3 Q And it seems -- I can barely read it, but it seems
4 to say, the part that's marked through, "Although
5 BorgWarner Diversified Transmission Products
6 Corporation Muncie Plant expects and intends to
7 continue the plant indefinitely --" and this is
8 where it gets tough to read, "-- it reserves the
9 right to modify, amend, suspend or terminate the
10 plan or the group policies therein in accordance
11 with the provisions of the health insurance
12 agreement."

13 Do you see that?

14 A Yes.

15 Q Is that provision, as you understand it, consistent
16 with what you understood Mr. Eckelman to be telling
17 you?

18 A I'd say no.

19 MR. BURCHFIELD: Let me ask the reporter to
20 mark as Ailes Exhibit 10, a document entitled
21 "negotiations update 12/8/09."

22 (Ailes Deposition Exhibit Number 10 was
23 marked for identification.)

24 BY MR. BURCHFIELD:

25 Q Mr. Ailes, you now have in front of you Exhibit 10.

1 Do you recall this document?

2 A Yeah, I guess I do.

3 Q You participated in the 2008, 2009 negotiations that
4 led to the closure of the plant, right?

5 A Correct. Well -- yeah, for the most part, yeah.

6 Q Let me ask you to look at the second page of this
7 document and there is a question there in about the
8 middle of the page that says, "What benefits will I
9 get if I retire today?"

10 Do you see that?

11 A Uh-huh.

12 Q And then in the answer portion, it says, "If you
13 retire before closing agreement is reached, you will
14 not be entitled to any benefits provided by that
15 agreement, but the company will continue to provide
16 the retiree benefits that were in place before
17 January 2006."

18 Do you see that?

19 A Yes.

20 Q And then it says, "BorgWarner has informed us that
21 after the contract expires, retiree insurance
22 benefits will be reduced. The company takes the
23 position that it is entitled to reduce or eliminate
24 benefits at any time. We disagree and will defend
25 our position vigorously in court."

1 Let me stop there. Do you see that?

2 A Yes.

3 Q And do you recall BorgWarner taking that position
4 during the shutdown negotiations?

5 A I'm sure they probably did. Yeah, that's why it's
6 there.

7 Q Do you understand that -- that that position is
8 inconsistent with the statement you recall Mr.
9 Eckelman making to you back in 1992 and '95?

10 A Yeah.

11 Q Okay. And then it says, "There is, however, a
12 substantial risk that we will not prevail. In that
13 event, retiree insurance benefits could be reduced
14 or eliminated at the company's sole discretion."

15 Do you see that?

16 A Yes.

17 Q So, is it -- would it be fair to say, Mr. Ailes,
18 that -- that based upon these documents, you do
19 recall the company taking the position that retiree
20 health care benefits at its Muncie Plant were not
21 lifetime vested and guaranteed?

22 A Well, I know they took that position, but earlier
23 you asked me had somebody told me that. In this,
24 they did take that position here, that's correct.

25 Q Do you recall being in the room at any point where

1 the company or company officials --

2 A During these negotiations, yeah, absolutely, yeah.

3 Q How about during prior negotiations?

4 A Prior negotiations, I can't recall them saying what
5 this is saying.

6 MR. BURCHFIELD: Let me ask the reporter to
7 mark as Ailes Exhibit 11 a document entitled,
8 "Health Insurance Booklet October 27, 1989
9 Agreement, Final Draft 11/15/91."

10 (Ailes Deposition Exhibit Number 11 was
11 marked for identification.)

12 BY MR. BURCHFIELD:

13 Q Mr. Ailes, I'm handing you Ailes Exhibit 11 and you
14 can take whatever time you want to look at this. I
15 would call your attention to the page with the last
16 three digits at the bottom 305 and 306.

17 A (Reviewing.)

18 Q And are you on page 305?

19 A Yeah, 305.

20 Q Do you see your signature there?

21 A Yeah.

22 Q That is your signature?

23 A Yes.

24 Q Then on page 306, you also see your signature there?

25 A Yes.

1 Q And am I correct that you -- you signed this
2 document in your capacity as a member of the -- of
3 the Local 287 negotiating committee?

4 A Yes.

5 Q And at the time you signed this, was it consistent
6 with what the Local had believed it had agreed to in
7 the 1989, 1990 negotiations?

8 A Since I wasn't a party of that, I'd have to rely on
9 somebody else, I'm assuming. But yeah, I mean they
10 signed it in '92, but I don't know why it was signed
11 in '92. I can't answer that question because
12 it's -- you're talking about 11/15 of '91. Coming
13 out of '89 negotiations I'm assuming -- I don't know
14 why it got to this point, I had just got to be a
15 committeeman at that point in time, or I hadn't been
16 on very long.

17 Q Well, did you sign it in reliance on other people at
18 the Local who confirmed that this was the deal they
19 had made?

20 A That's probably a true statement.

21 Q Okay. Let me ask you to look at the page with the
22 last three digits 304 at the bottom.

23 A Okay. (Reviewing.)

24 Q And in Article 10, XII. Do you see there?

25 A Yes.

1 Q It says, in the first sentence, "This agreement and
2 the plan embodied herein shall become effective as
3 of October 27, 1989 and continue in full force and
4 effect until September 12, 1992.

5 Do you see that?

6 A Yes.

7 Q And then skipping to the next paragraph it says, "On
8 September 12, 1992 this agreement may be terminated,
9 modified, changed or continued in the same manner as
10 provided in Article 16 of the aforesaid collective
11 bargaining agreement between the parties hereto
12 dated October 27, 1989." Do you see that?

13 A Uh-huh.

14 Q Do you view that as being consistent or inconsistent
15 with your recollection of what Mr. Eckelman told
16 you?

17 A Inconsistent.

18 Q Would you agree that the -- that the appearance of
19 this provision in a written contract signed by the
20 UAW would trump whatever Mr. Eckelman told you?

21 MR. MACEY: Objection. Calls for a legal
22 conclusion.

23 BY MR. BURCHFIELD:

24 Q You can answer.

25 MR. MACEY: You can answer.

1 THE WITNESS: It's inconsistent with what
2 he said, but I mean I guess the answer would have to
3 be yes based on what I'm reading there.

4 BY MR. BURCHFIELD:

5 Q I'm sorry?

6 A Yes, based on what I'm reading there, but it's
7 inconsistent with my understanding of it.

8 Q Okay. Let me ask, you recall that there was --
9 there was an agreement called the ACME agreement
10 that was executed at some point?

11 A Yes.

12 Q And that was the agreement on contract modification
13 and extension?

14 A Correct.

15 Q It's like a Washington term, we try to turn
16 everything into a fancy little acronym, but you --

17 A I wasn't part of that, by the way. I didn't come up
18 with that acronym.

19 Q I thought it was kind of clever.

20 A I didn't care for it.

21 Q Did you participate in any of the -- in any of the
22 task forces that were created by the ACME agreement?

23 A No, I did not, because the time they got really
24 going I was part of the committee. And I wasn't
25 part of that little study group they had.

1 Q Okay. Did you -- do you remember reviewing any of
2 the reports from the committees?

3 A Well, I'm sure we did.

4 MR. BURCHFIELD: Let me ask the reporter to
5 mark as Ailes Exhibit 12 an agreement on
6 modification and extension of existing labor
7 contract.

8 MR. MACEY: Can we take like three minutes?

9 MR. BURCHFIELD: Let me do this exhibit
10 first, then we'll -- maybe we'll take a couple
11 minutes.

12 (Ailes Deposition Exhibit Number 12 was
13 marked for identification.)

14 BY MR. BURCHFIELD:

15 Q Mr. Ailes, I'm handing you Ailes Exhibit 12. And if
16 you'd like, at the page with the last three digits
17 424, you'll see this agreement was executed, Muncie,
18 Indiana, this 27th day of September 1990. And there
19 are a bunch of signatures there, including Mr.
20 Eckelman.

21 Do you see that?

22 A Yes.

23 Q And I do not see your signature here.

24 A No.

25 Q In your recollection, do you recall having seen this

1 document before?

2 A Oh, I'm sure I've seen the document.

3 Q Let me ask you to look at Exhibit 3 to that
4 document, with the last three digits 427 at the
5 bottom.

6 A Go ahead.

7 Q And it says, "Joint letter of agreement on
8 post-retirement benefit liabilities" at the top.
9 Are you on that page with me?

10 A Yes.

11 Q At the bottom it says, "This agreement does not
12 prejudice the Union's position that current retirees
13 have lifetime vested benefits."

14 Let me stop there. That was the Union's
15 position, right?

16 A That's correct.

17 Q "Nor the DTP Muncie Plant's position that current
18 retirees do not have lifetime vested benefits." Do
19 you see that?

20 A Yes.

21 Q And that statement of the Muncie Plant's position,
22 is that consistent or inconsistent with what you
23 understood Mr. Eckelman to have said to you?

24 A It would be inconsistent.

25 MR. BURCHFIELD: Want to take a break?

1 (Off the record at 11:29 a.m.)

2 (Back on the record at 11:39 a.m.)

3 BY MR. BURCHFIELD:

4 Q Mr. Ailes, still on Ailes Exhibit 12, which is the
5 agreement on modification and extension of existing
6 labor contract, do you have any -- do you have any
7 explanation for why Mr. Eckelman would be a
8 signatory of this document which contains the
9 statement that the DTE Muncie Plant's position is
10 that the current retirees do not have lifetime
11 vested benefits, while he would tell you something
12 that you think is inconsistent with that?

13 A Well, I don't know why he signed it, if that's what
14 you're asking me.

15 Q Is it possible you misunderstood what he told you?

16 A No.

17 Q When you saw this document, did you raise with
18 anyone at the UAW your concern that what -- that the
19 Muncie Plant's position as stated here was
20 inconsistent with what Mr. Eckelman told you?

21 A Well, I'm sure I probably did. I mean, but I
22 don't -- I mean, I can't tell you exactly who. I'm
23 sure it was Muncie committee starting off, because
24 in them days or this time I was a committeeman, I
25 wasn't chairman, I wasn't a president.

1 Q Well, would you -- would you have -- do you know who
2 you would have brought that concern to, if it had --
3 if you did bring it to someone?

4 A To be honest -- I mean, I don't -- I'm assuming it
5 would have been the chairman, but I can't tell you
6 that for sure. It could have been who I was in the
7 office with. I mean, I just don't recall in 1991.
8 I mean --

9 Q Would it have been important to you, to have sought
10 a change in this agreement, if you had seen it at
11 that point?

12 A I guess I don't know how to answer that. I mean,
13 because there have been benefits that clearly went
14 beyond that, so I -- I mean, that was their
15 position, I guess, and we had our position. So I
16 mean, I don't know what --

17 Q You --

18 A And we had the '92 agreement, so -- you know, if
19 there was any question or doubt, the '92 agreement
20 took care of all that.

21 Q Okay. Well, let's look at the '92 agreement.

22 (Ailes Deposition Exhibit Number 13 was
23 marked for identification.)

24 BY MR. BURCHFIELD:

25 Q Mr. Ailes, I'm handing you what's been marked as

1 Ailes Exhibit 13. It's entitled, "Health insurance
2 agreement." And at the bottom it says, "This
3 booklet is intended to reflect the 1992 changes to
4 the health insurance agreement of October 27, 1989
5 represented in Exhibit A of December 11, 1992
6 contract negotiations agreement."

7 A Okay.

8 Q And once you've had a chance to look at that, would
9 you confirm that that is the 1992 health agreement?

10 A I mean, it appears to be.

11 Q Let me ask you to look back at Ailes Exhibit 9,
12 which is the memorandum from Ms. Hess to you dated
13 August 5, 1996, the thick document there, with the
14 attached -- her attached markup of an agreement.

15 MS. PREIS: Flip that one over. I believe
16 that's it.

17 BY MR. BURCHFIELD:

18 Q That's it. And if you look at the front page of
19 this document -- I won't ask you to look at the
20 whole thing, but it contains, does it not, the
21 same --

22 A Yeah.

23 Q -- wording?

24 A Yeah.

25 Q Okay. Now you will recall, if you look at -- at

1 page 1139 of Exhibit 9, the one with Ms. Hess's
2 comments, that she had marked out the provision
3 under future of the plan. Do you see that?

4 A Uh-huh.

5 Q Well, let me first ask you, could you confirm on
6 page 598 of Ailes Exhibit 13, that that is your
7 signature on that document? It's on the very back
8 page.

9 A Yeah, that's my signature.

10 Q And you see Mr. Eckelman signed it?

11 A Uh-huh.

12 Q And a number of other people from BorgWarner signed
13 it, Mr. Daffara Mr. Nuerge, Mr. Cruea?

14 A Cruea.

15 Q -- Alan Straub --

16 A Straub.

17 Q -- and then a number of people from the Local 287
18 including you, right?

19 A Uh-huh, yes.

20 Q In your position as recording secretary?

21 A Yes.

22 Q Okay. And what duties did the recording secretary
23 have?

24 A Just took notes during the bargaining sessions.

25 Q And when the -- when the draft agreement was

1 circulated, did -- was it part of the recording
2 secretary's responsibility to go through the draft
3 agreement and confirm that the draft agreement was
4 consistent with what had been agreed to?

5 A That would have been -- probably rest on the
6 chairman.

7 Q Okay. Did he -- did the chairman consult with the
8 recording secretary, I mean, and review the
9 secretary's notes?

10 A Not per se. I mean, it more probably would be --
11 with Laura saying I found a problem here, I found a
12 problem there, or whoever the benefits person was at
13 the time.

14 Q Okay. For this 1992 agreement, the chairman of the
15 negotiating committee was Mr. Cross; is that right?

16 A That's correct.

17 Q And whatever discussions would have been had with
18 Ms. Hess about this agreement would have been by
19 Mr. Cross?

20 A Probably, yes.

21 Q Okay. Well, let me -- let me ask you to look at the
22 page with the last three digits 586. It's -- the --

23 A I'll get there.

24 Q If the typewritten numbers are easier to find, it's
25 page 130.

1 A I see it.

2 Q Okay. You there?

3 A Yep.

4 Q It has under the heading "Future of the plan"?

5 A Uh-huh.

6 Q It says, "Although BorgWarner Automotive Diversified
7 Transmission Products Corporation Muncie Plant
8 expects and intends to continue the plant
9 indefinitely, it reserves the right to modify,
10 amend, suspend or terminate the plan or the group
11 policies therein in accordance with the provisions
12 of the health insurance agreement."

13 Do you see that?

14 A Yes.

15 Q And then it says, "An individual's insurance
16 coverage terminates when that person is no longer
17 eligible or when the group insurance policies
18 terminate, whichever happens first."

19 Do you see that?

20 A Yes.

21 Q And that is -- am I correct that that's the language
22 that Ms. Hess objected to when this agreement came
23 up for renewal in 1996?

24 MR. RADTKE: I object. That's a
25 mischaracterization of the documents, but --

1 BY MR. BURCHFIELD:

2 Q You may answer.

3 A I mean, I can't speak for her. I mean, I don't know
4 how -- what you're --

5 Q Well, you see -- you see in Exhibit -- in Exhibit 9,
6 which is Ms. Hess's markup of this document attached
7 to her memo to you dated August 5, 1996, that in the
8 corresponding language that I just read, Ms. Hess
9 has marked through it and written "no"?

10 A Uh-huh.

11 Q Do you see that?

12 A Yes, I see that.

13 Q Okay. Insofar as you could tell, it's the same
14 language?

15 A I mean, if you're asking me is this and this the
16 same, I guess it looks like it is, but I can't
17 really read all that.

18 Q Okay. It's a little hard to read because of the
19 markup. But that appears to be the provision that
20 Ms. Hess objected to in 1996, right?

21 A Appears to be, but like I said, you have to ask her.

22 Q And if you look at page 468 of Exhibit -- of Exhibit
23 13, the 1992 agreement --

24 A We need to take a time-out. I need to speak with
25 Barry.

1 MR. BURCHFIELD: Okay. Let's take a break
2 then, if you need to take a break.

3 (Off the record at 11:50 a.m.)

4 (Back on the record at 11:51 a.m.)

5 THE WITNESS: I need to point something out
6 to you though. These signatures, this document,
7 wasn't one single document when the signatures were
8 signed. You can look at the -- if you look at this,
9 this is what was signed. I'm talking 139, okay?
10 When we come out of that, this was signed. It was
11 not attached to this whole big document. That's why
12 you're seeing -- the big document apparently went up
13 to Laura, that's why you're seeing this '96 compared
14 to this back then.

15 So when we signed it, we didn't have this
16 whole big document in front of us, that I recall, it
17 was just this piece here. That's why you see the
18 signatures like you did on this piece of paper
19 here.

20 BY MR. BURCHFIELD:

21 Q Well, let me -- let me follow up on that. You see
22 at the bottom of the signature page that you -- that
23 you just referred to, where your signature appears?

24 A 139?

25 Q It says --

1 A 140 is where the signatures are.

2 Q 140, correct.

3 A Right.

4 Q You see the document is consecutively paginated from
5 the very first coverage page which says, "Health
6 insurance agreement --"

7 A I understand that. I'm just telling you my
8 recollection of this thing was this was not attached
9 to this whole document, because you're looking at
10 when we signed this in '92, and this is still at
11 '96, they're still looking at the verbiage. That's
12 my whole point.

13 Q Well, isn't it the case, Mr. Ailes, that the -- that
14 the agreement that Ms. Hess reviewed in 1996, which
15 we marked as Ailes Exhibit 9, was intended to
16 reflect changes coming out of the '95 negotiations
17 and those changes were simply being made as markups
18 on the existing 1992 contract?

19 A There were very few changes in '95.

20 Q That's exactly right.

21 A I'm just telling you, I just want to clarify my
22 recollection that this was not attached to this
23 document, is my only point.

24 Q Okay. So, would it -- signing -- signing an
25 agreement in your capacity as a member of the

1 bargaining committee for Local 287 was a pretty
2 significant event, wasn't it?

3 A I understand that.

4 Q And as recording secretary, you understood that you
5 had responsibilities to your -- to the members of
6 the Local, right?

7 A I understand my responsibilities to the members.

8 Q And would it -- would it be odd for you to sign a
9 two-page document with pagination 139 and 140 at the
10 bottom of it?

11 A And I -- to be honest, I don't recall the numbers
12 down here like that. I don't recall that. I'm just
13 telling you I know it wasn't attached to this piece.
14 That's my only point. I didn't want to go saying --
15 having you think they handed me this document, we
16 went through this document and then we signed it.
17 That didn't happen like that.

18 Q Okay. Well, you would -- you will agree with me,
19 won't you, that if we look at page 468 of Ailes
20 Exhibit 13, Article 12 of Section 2 says, "Any
21 provision in this agreement or any exhibit attached
22 hereto relating to deductibles and stop loss limits
23 shall survive termination of this agreement, such
24 provisions terminate on December 31, 2002 unless
25 previously modified and/or extended."

1 Do you see that?

2 A Which one are you talking about? Yes.

3 Q And then in the next paragraph it says, and by the
4 way, you -- does that language accurately reflect
5 what you understood the agreement to be concerning
6 deductibles and stop loss limits, that the agreement
7 would continue through December 31, 2002?

8 A That -- that would carry on, you're talking about
9 the table?

10 Q Yes.

11 A Yeah, that it would go past the collective
12 bargaining -- yes.

13 Q And then the next paragraph says, "On March 12,
14 1998, this agreement may be terminated, modified or
15 changed or continued in the same manner as provided
16 in Article 16 of the aforesaid collective bargaining
17 agreement between the parties hereto dated October
18 27, 1995, as modified by the 1992 agreement."

19 Do you see that?

20 A I see it.

21 Q And was that part of the agreement reached in 199 --
22 in 1992?

23 A Well, the reason I'm thinking about it is because
24 there was several things that surpassed the
25 collective bargaining agreement itself, and those

1 deductible stop losses was one of them. And I don't
2 know if this piece was reviewed by someone else
3 other than the bargaining committee, what you're
4 talking about there. That's why I'm saying the
5 whole thing was being back and forth at the time.
6 That's why you see from '92 to '96. And I can't
7 speak for if that's the exact right verbiage or not.

8 Q Well, is it your recollection that there was a
9 different agreement, health insurance agreement
10 signed between the company and the Union covering
11 the 1992 changes?

12 MR. RADTKE: I'm going to object as to
13 form. You can answer.

14 THE WITNESS: I guess I don't understand
15 what you're saying. It was changes made in '92.

16 BY MR. BURCHFIELD:

17 Q Right.

18 A Okay. And some of those changes, if you're talking
19 about the table, went to 2002. So I guess -- I'm
20 not understanding what your question is, I guess.

21 Q Well, there was -- there was -- you participated in
22 -- you did not participate in the '92
23 negotiations?

24 A Yes, I did.

25 Q You did. Okay. And as I understand it, retiree

1 health care benefits -- health care benefits and
2 retiree health care benefits were significant
3 aspects of the '92 negotiations; is that right?

4 A Post-retirement benefits was talked about when we
5 talked about it in the context of the active people
6 and future retirees.

7 Q Was the agreement -- and there was an agreement
8 reached in 1992 concerning those issues, right?
9 Those issues and other issues?

10 A That's correct, for active and future retirees,
11 you're absolutely right. That's what come up with
12 401(h).

13 Q And do you recall that there was -- was or was not a
14 health insurance agreement executed by the Union in
15 1992?

16 A That, I can't tell you because that's what I'm
17 trying to say, during that time, we had the '92,
18 they was still coming back after the '89, you got
19 into the '90 ACME -- or ACME, whatever you want to
20 call that agreement that made up those study
21 committees, all right. So this statement, as you
22 can see in '96, they're still talking about this
23 same agreement. Meanwhile, we've had a '95
24 agreement. So I mean, I don't know how -- I'm not
25 trying to be elusive, I just don't know how to

1 answer what you're asking me, I guess.

2 We did have an agreement in 1992. 1992 was
3 set up so that from anybody hired in after that --
4 that's what the whole -- that's what the whole deal
5 was about in 1992, the FASB liabilities that the
6 company was after for future people. And that was
7 anybody hired in after -- I think January of '93 to
8 be precise, but don't hold me to the exact date.

9 And we talked about going from this point,
10 we got active that's going to be retiring, future
11 retirees, what their benefits are. And then after a
12 certain point, those people hired in after that
13 point, that's when 401(h) kicked in. That's why it
14 was like, we saved the day. This is the guru of all
15 gurus, and we've taken the -- there's no argument.
16 There's no argument. I mean, I don't know how else
17 to say it. That's my recollection of it.

18 So I don't -- when you start looking at
19 these different documents it gets confusing because
20 they was still -- I mean, not even necessarily
21 through us, through BorgWarner attorneys and our
22 International, you know, the gurus that check --
23 guru is probably not a good -- but people that look
24 at these things. That's why it's hard for me to
25 say, yeah, why did she -- I don't know, I mean I

1 can't tell you why that's marked out outside of the
2 fact that maybe she didn't -- I'm just speculating
3 to say why she marked that particular thing out. I
4 don't know.

5 Q Well, let me -- let me back up and try to -- and
6 maybe we can try to clarify this a little bit.

7 A Okay.

8 Q It was my understanding that from collective
9 bargaining cycle -- from one collective bargaining
10 cycle to another, that the terms of the health
11 insurance agreement remained the same unless they
12 were specifically changed from one cycle to the
13 next?

14 A That's probably a true statement, but some of them
15 even surpassed that. I mean, there were some things
16 contained in the health agreement that surpassed the
17 collective bargaining agreement, regardless of what
18 happened --

19 Q Such as the deductible escalator we talked about?

20 A Well, and there's also -- there's a clause in there
21 I believe about if someone passes, there's a
22 nine-month window. I mean, don't -- I can't get you
23 the exact, but there's other things that surpassed
24 that, you know, and they would just go on.

25 So just for instance, plant closed and

1 under the agreement some of those people would go
2 for nine months, I think one of them calls for
3 nine-month window, that's what I'm saying.

4 Q So if there -- so, if there was -- are you saying if
5 there was an intention for provisions of the
6 agreement to go beyond the expiration date of the
7 health insurance agreement, of the collective
8 bargaining agreement, that that would be explicitly
9 stated in the --

10 A That's not what I'm saying. I'm just saying you got
11 to understand during this time when it comes to
12 these agreements, you're correct -- and when we go
13 into negotiations, we would negotiate some changes.
14 Sometimes there were no changes, sometimes there
15 were minor changes, okay? But, when you start
16 comparing this one here and this one here, I can't
17 tell you why -- if this language was okay or not
18 okay, because we weren't -- we didn't have a copy
19 that says here's somebody's -- it's been blessed by
20 both sides of it and everybody says yeah, this is
21 exactly what it says. I guess that's what I'm
22 trying to say.

23 Q Well, it was my understanding, Mr. Ailes, that --
24 that the Union did not get around to executing --
25 and we'll talk about why -- but did not get around

1 to executing the '95 and '98 agreements, but that it
2 did execute the '92 agreement. Am I wrong about
3 that?

4 A You've lost me then I guess, on what you're saying.
5 Didn't execute the '95 agreement? You're talking
6 about the collective bargaining agreement or are you
7 talking about -- because collective bargaining
8 agreement absolutely was executed and signed.

9 Q Was there a decision made by the Union not to
10 execute a health insurance agreement?

11 MR. MACEY: May I ask for a clarification
12 on the word "execute"; are you talking signed or are
13 you --

14 MR. BURCHFIELD: Signed.

15 THE WITNESS: We would not sign until the
16 gurus told us, yeah, this is -- this is good to go.
17 We didn't sign it. I mean, that's just -- what you
18 end up having, you have several years there where
19 you had -- it just kept going, even if it was a
20 minor change, while somebody was looking at it or
21 making sure it was okay, that's why I guess I have a
22 hard time when you say "execute", because we
23 definitely execute, we done the agreement in 1992, I
24 realize what we did there. '95, the agreement --
25 the bargaining agreement was executed. I believe

1 the bargaining agreement was executed again in '98.

2 I wasn't part of that so -- but I'm pretty sure it
3 was. So I'm confused as to what you're saying. I'm
4 not trying to --

5 BY MR. BURCHFIELD:

6 Q Do you recall whether or not the Union executed,
7 signed, a health insurance agreement in 1992? Do
8 you recall one way or the other?

9 A The agreement itself, I don't think so. The
10 health -- the -- it was in two parts. I mean, you
11 had -- we went through the negotiations of the --
12 the ten years and all that kind of stuff, okay? And
13 we signed that P7, but that was just a small piece
14 of the bigger booklet that was being reviewed by
15 both sides.

16 Q And do you recall -- well, do you recall whether the
17 Union executed, signed, a health insurance agreement
18 after the '95 negotiation?

19 A I don't know. I can't recall that. Because here we
20 are in '96, I mean according to you in '96 and I --
21 she's still looking at it. So I can't see us
22 signing that particular agreement unless she's
23 already done her review and get it back saying, hey,
24 this is good.

25 Q Do you recall, one way or the other, whether there

1 was one executed?

2 A That's what I just said, I don't.

3 Q And how about -- how about '98? Do you recall --

4 A I wasn't there in '98. I was just coming back from
5 being on a leave for organizing. And I didn't come
6 back in May of '98. So, no, I'm not sure about
7 that. Because I wasn't involved in the collective
8 bargaining agreement in '98.

9 Q Do you recall any discussions within the Union,
10 within the Local, between the Local and the
11 International, or at the International level, any
12 discussion within the entire UAW organization?

13 A The only discussion --

14 Q -- about -- about whether -- whether to sign or not
15 to sign the '92 health insurance agreement?

16 A The only thing I can say to that is, at the Local
17 level, we did not sign until it was okay'd through,
18 in this case would have been Laura, that they had
19 reviewed and was okay'd with this booklet. But -- I
20 mean, that's all I can tell you. I don't recall did
21 we -- did we finally get one back. Because at one
22 time both sides were frustrated because it was kind
23 of out of the Local's hands, both the Local and
24 Local management because somebody had this -- they
25 was looking at and we're wondering yeah or nay. So

1 I can't tell you if somebody said, okay on the
2 health, here it goes, here's the signature. I can't
3 tell you that.

4 Q Do you recall there being a specific provision that
5 was in dispute between the Union and the company
6 that was holding up execution, signing of the
7 agreement?

8 A I don't know if there was any one thing. I don't
9 know that to be a fact. I mean, some of the
10 discussions I was not privy to, as far as I wasn't
11 involved in who was talking to who, because
12 sometimes this level was talking to these people at
13 this level, and you know, you got the BorgWarner --
14 when I say you got BorgWarner over here and you got
15 International over here, and these people, they was
16 exchanging and they was talking, but it wouldn't
17 have floated down to us unless they had a question
18 say, they're saying "this" on this particular
19 language, should say "the" instead -- I mean, I know
20 I'm not making much sense on it, but that's just my
21 recollection of how that went back and forth, that's
22 why I can't give you --

23 Q Well, let me make sure I understand your
24 understanding of what we marked as -- as Ailes
25 Exhibit 13, which is the -- which is the document

1 that your signature appears on on page 140 of. Do
2 you have that in front of you?

3 A Yeah, right here.

4 Q Okay. Now, is it your -- is it your understanding
5 that the first 138 pages of this document were not
6 signed off on, executed, agreed to by the UAW?

7 A That's my understanding, but I don't -- all I can
8 tell you is this signature page was not attached to
9 this and it was still going through the agreement at
10 a different level than what I was at.

11 Q Okay. Well, let me -- I understand -- I understand
12 your recollection on that. Do you -- do you recall
13 any instance in which BorgWarner agreed to remove
14 the language we looked at previously on page 586 of
15 Ailes Exhibit 13? That language being --

16 A I don't know if they did or they didn't. I wouldn't
17 know that.

18 Q Just to make sure we're clear, on page 586, the
19 language I'm referring to is under the heading
20 "Future of the plan. Although BorgWarner Automotive
21 Diversified Transmission Products Corporation Muncie
22 Plant expects and intends to continue the plant
23 indefinitely, it reserves the right to modify,
24 amend, suspend or terminate the plan or the group
25 policies therein in accordance with the provisions

1 of the health insurance agreement."

2 And my question for you is: Do you recall
3 any indication from BorgWarner that it was willing
4 to delete that provision from the insurance
5 agreement?

6 A The only occasion I would have had is in the '92
7 agreement. That's what the damn thing was about. I
8 mean, nobody had any conversation with me one way or
9 the other on that piece. If you're asking did they
10 say, hey, we're -- I mean, I can't answer that.

11 Q And then on page 468 of that same document, the last
12 paragraph on that page says on March 12, 1998, "This
13 agreement may be terminated, modified, changed
14 or --"

15 A Hold on. I'm sorry.

16 Q Oh, I'm sorry.

17 A That's all right. I went to the wrong page.

18 Q Page 468 is -- the typescript number at the bottom
19 is 14, if that's a little easier for you.

20 A Okay. I'm at 468.

21 Q The provision I'm referring to here is on March 12,
22 1998. "This agreement will be terminated, modified
23 changed or continued in the same manner as provided
24 in Article 16 of the aforesaid collective bargaining
25 agreement between the parties hereto dated October

1 27, 1989 as modified by the 1992 agreement."

2 Do you see that?

3 A Yes, I see it.

4 Q And are you -- are you aware of any instance in
5 which a representative of BorgWarner explicitly said
6 BorgWarner was willing to delete that language from
7 the health insurance agreement?

8 A I can't answer that one way or another.

9 MR. BURCHFIELD: Let me ask the reporter to
10 mark as Ailes Exhibit 14 a set of handwritten notes
11 dated August 27, 1999.

12 (Ailes Deposition Exhibit Number 14 was
13 marked for identification.)

14 BY MR. BURCHFIELD:

15 Q Mr. Ailes, I'm handing you these handwritten notes.
16 And these appear to be the handwritten notes of Mr.
17 Nuerge recording his notes of a conversation that he
18 seems to have had with you and Jeff Fallis on that
19 date.

20 Do you have Exhibit 14 in front of you?

21 A Yeah.

22 Q And it says -- it's dated August 27, 1999. It says,
23 "I discussed the '92, '95 and '98 health insurance
24 agreements and the 1995 and 1998 pension agreement
25 status with Mike Ailes and Jeff Fallis during an

1 informal hallway meeting this morning. Mike is also
2 concerned that we never got sign-offs from the
3 International Union on any of these agreements and
4 said he will do some more checking with the
5 International as to how those plans can be finalized
6 officially. Obviously, we have been living up to
7 the agreements as presented to the International --"
8 et cetera.

9 Do you see that?

10 A Yeah. Yes.

11 Q And do you recall that conversation?

12 A I'm sure we did -- I mean, I don't know if that
13 particular day, but I'm sure we had that
14 conversation because we both had talked about that.

15 Q And do you -- what were you being told by -- do you
16 recall what you were being told by the International
17 about why it was not signing off on the -- on those
18 agreements?

19 A Well, it depends on what point because at some time
20 they didn't even have the agreement when I checked,
21 it was still at corporate. So corporate had not
22 sent it over. According to -- my source would be I
23 would go to rep, which in this case was Chuck Smith.
24 He was my International representative at the time
25 that his assignment was the Local.

1 Q Do you -- do you recall at any point that the
2 International submitted proposed changes or edits to
3 the company's draft to -- back to the company?

4 A I'm sure they did. I can't tell you the time frames
5 on it. I mean, I wasn't privy to that. I mean,
6 they probably may have sent us a copy. That's why I
7 said one set was here and one set was there at
8 different points in time. But I can't recall the
9 exact procedure or mechanism that took place.

10 Q Well, do you recall submitting -- do you recall
11 transmitting the comments made by Ms. Hess in
12 Exhibit 9, the August 5, 1996 memorandum from Ms.
13 Hess to you, with some marked-up changes, do you
14 recall -- do you personally recall submitting those
15 changes back to the company?

16 A I may have. I'm just not for sure. I mean, I don't
17 know whether I would have or she would have kind of
18 thing. Because I know at one time, we wanted to put
19 both of them into a room and try to get the thing
20 ironed out, but I can't really recall how that --
21 the mechanism worked. You know, I don't know did
22 she send it down to me and did I just send it or I
23 just got a courtesy copy and she sent it to them, I
24 can't answer that.

25 Q Well, do you know, Mr. Ailes, for a fact that the --

1 that changes -- that edits were ever transmitted
2 from the International back to BorgWarner on any of
3 these agreements?

4 A I think at one time it was. But, I can't -- I don't
5 know the time frame. I just don't know the time
6 frame. I mean, that's been a long time ago.

7 Q Do you know which agreement it would have been
8 relevant to?

9 A No, I can't tell you that because they all started
10 blending together. I mean, when you look at -- I
11 mean, we're still dealing with '96 from '92, because
12 of the '95. I mean, I can't accurately tell you,
13 no.

14 MR. BURCHFIELD: Let me ask you to look at
15 what the reporter can mark as Ailes Exhibit 15, an
16 e-mail dated March 26th, 2001 to Charlene Giles,
17 again, from Mr. Nuerge.

18 (Ailes Deposition Exhibit Number 15 was
19 marked for identification.)

20 BY MR. BURCHFIELD:

21 Q Do you have in front of you Exhibit 15, Mr. Ailes?

22 A Yes, I do.

23 Q And this is an e-mail with Mr. Nuerge's name at the
24 top dated March 26, 2001. Do you see that?

25 A Say that again. I'm sorry.

1 Q This is an e-mail apparently from Mr. Nuerge, to a
2 number of people, dated March 26th, 2001. Do you
3 see that?

4 A Yes.

5 Q And it reports "On Friday, 3/24/2001, Mike Ailes,
6 International representative, was at the BorgWarner
7 plant and briefly stopped in the insurance and
8 pension office and talked with Sandra Roark and
9 with me. While he was there, I asked about the old
10 1992 and 1995 health insurance agreement drafts that
11 we had given to Local 287, UAW and the International
12 Union. Mike related that he had so far been unable
13 to get a discussion about those plan documents with
14 Laura Hess or any other International UAW Solidarity
15 House official. Mike said he must follow a certain
16 protocol for such matters, and once he learns
17 exactly how to present the issue, we also mentioned
18 that the 1995 and 1998 hourly defined pension plans
19 have also been operating as presented to the Union,
20 but they also need to be formally signed by all
21 parties to those plans as well. He will do so."

22 Do you see that?

23 A Yeah, I see it.

24 Q Do you recall that discussion?

25 A No. I mean, I might have been in that plant for

1 something. He might have mentioned it. But I don't
2 know in that detail, I just don't recall.

3 Q Well, do you recall, during the period that you were
4 the International -- that you were the bargaining
5 unit chair or the International representative, do
6 you recall at any point having discussions with Ms.
7 Hess or anyone else at Solidarity House to inquire
8 about the holdup on approval of the existing drafts
9 of the health insurance agreements?

10 A Well, as a chairman I would have went through my
11 rep, okay? And then as International rep, I
12 probably would have went -- got permission from the
13 director to make a call to find out what the status
14 of it is. But -- and I'm sure that probably
15 happened, but where that was at that time, I don't
16 recall.

17 Q And just -- I just want the record to be clear on
18 this. You -- you don't recall specifically having a
19 conversation --

20 A Well, I mean --

21 Q -- with the International about the status of the --

22 A I may have had a conversation as inquiring as to
23 where we're at with it, but I can't -- I mean, I
24 don't recall whether it was -- they was still
25 waiting on information from -- I can't recall what

1 was said back, whether we're looking at it, whether
2 corporate's got it. I don't recall that piece of
3 it.

4 Q So as you sit here today, you could not testify with
5 respect to any specific date on which you had that
6 con -- had a conversation with the International
7 about the status of the drafts?

8 A I can't give you a specific day, no.

9 Q Can you give me a specific name of someone you
10 talked to at the International?

11 A It would have been Laura Hess I'm sure.

12 Q Can you give me a specific -- the specific substance
13 of the conversation you had with Ms. Hess about --

14 A It'd be -- I mean, I can't tell you verbatim. It
15 would be something like, you know, can you tell me
16 the status of where we're at with --

17 Q And can you tell me specifically what she would have
18 responded?

19 A You know, I really don't -- I mean, I can speculate,
20 but I don't really know for sure what --

21 Q In your experience with the UAW, is it unusual
22 for -- for there to be a backlog of -- of three
23 consecutive health insurance agreements that had
24 been -- that had been agreed to but not executed by
25 the parties?

1 A I can't answer that. I can tell you what -- I mean,
2 it wasn't a one-sided issue. It was two parties
3 involved in this, that was -- so it wasn't just UAW
4 waiting. It was -- some of the blame goes to
5 corporate.

6 Q Well, do you recall any specific points of
7 controversy or any specific points that were not
8 mutually agreed to that prevented execution of these
9 drafts?

10 A I can't tell you. I mean, I don't know that. I
11 don't know what -- was there -- I don't know. I
12 mean, did somebody say we're not going to sign this
13 or -- I don't know that. I just don't recall that.

14 Q So you can't -- you can't testify that the UAW
15 declined to execute these drafts because of either
16 of the provisions that I've just pointed out to you?

17 A I don't -- I mean, I don't know if that was the only
18 reason or main reason -- I can't answer that.

19 Q Do you know if it was -- if it was a reason?

20 A No, I don't -- I mean, I don't know that that was
21 part of it. I don't know. I don't know. I mean, I
22 just don't know how to answer that to you.

23 Q Are you aware of any respect in which the company
24 did not fulfill its responsibilities under the 1992
25 health insurance agreement during the three years it

1 was in effect?

2 A I guess I don't -- in what way? I guess I don't
3 understand.

4 Q In any way?

5 A I mean, I don't understand your question.

6 Q Do you recall -- do you recall any way in which
7 BorgWarner did not fulfill the obligations it agreed
8 to in the 1992 negotiations about health insurance?

9 A I can't recall off the top of my head. I mean --

10 Q Same question for the 1995 agreement?

11 A I mean, I can't -- right off the top of my head, I
12 mean, we had some controversy, depending on what
13 year. I mean, you're going back several years, so I
14 guess I can't recall at this particular time, no.

15 Q How about '98?

16 A Well, I wasn't involved in the '98 negotiation. I
17 came on after that.

18 Q Right, but did you hear from --

19 A At one point in time there was some controversy on a
20 couple of things: One as it related to insurance,
21 but then the company changed up on that. But I
22 can't give you specifics at this point in time.

23 Q Do you recall approximately what -- what period,
24 what date that controversy arose?

25 A No, I can't. Not right now I can't.

1 Q After you became the International rep in 2000, do
2 you recall hearing from the Local that BorgWarner
3 was not fulfilling its agreements under the health
4 insurance agreements?

5 A Once again, I can't -- there was something went on.
6 I can't give you specific dates right now in front
7 of me. So I don't know the time frame I guess is
8 what I'm trying to say. There were two or three
9 things that went on after the -- I guess after the
10 2000 there was -- something went on as it pertains
11 to profit-sharing. I mean, you know, I got 18, 19,
12 sometimes 20 locals during this period of time once
13 I was rep, so -- to be specific about it, I may be
14 able to look at something and say now I recall it.
15 But I can't tell you right now, boom, you know, on
16 December 2nd, 19 -- you know, I can't do that at
17 this particular time.

18 Q I'm interested in anything that you can -- that you
19 can tell me specifically that would contradict
20 BorgWarner's position that it fulfilled its
21 responsibilities under the agreements, health
22 insurance agreements that were negotiated and agreed
23 to in '92, '95, '98, 2000, 2005.

24 A 2005, there were several, but that's a whole
25 different ball game as it pertained to health

1 insurance, actives. I mean, I guess I don't know
2 how to answer that question for you, because there
3 had been various things over the course of time, you
4 know. Whether some got resolved, some didn't,
5 sometimes when they get resolved sometimes it
6 doesn't stick in your head as well. So I guess I
7 don't know how to answer that question.

8 Q Okay. You say that there were some issues from time
9 to time. Can you give me any specifics?

10 A One of them they tried to do prescription drugs for
11 retirees, they tried to change that. That was not
12 agreed to and they tried to change that up. I can't
13 tell you exactly when that was. I can tell you it
14 happened.

15 We had a thing in 2005 when it was related
16 to health care that the company took a position on
17 it, you know, and we took an opposite position.
18 They didn't fulfill -- in my opinion, fulfill what
19 was agreed to in 2005. But I can't tell you, you
20 know -- after -- especially after the close on that
21 particular -- some of them issues, that one had to
22 go away. I mean, it wasn't nothing there. But I
23 can't give you time frames. I can just tell you
24 there was discrepancies, we'd go in and say no, this
25 is not what was agreed to and they would back off of

1 it, or they would change up, or they would say
2 you're right.

3 Q Do you recall any other examples?

4 A Not sitting right here right now, no, not off the
5 top of my head.

6 Q Is there anything you could look at that would
7 refresh your recollection on that?

8 A I don't know, possibly.

9 Q What would it be?

10 A I don't know.

11 Q You had said before, Mr. Ailes, that -- that the
12 company put in writing that retiree health care
13 benefits were lifetime vested benefits?

14 A One time it was a pamphlet they used to give to
15 them.

16 Q And describe that pamphlet for me.

17 A It was -- I don't know, just a little thing, they'd
18 go out, they'd sign up and say, okay, here's your
19 benefits. And at that time it said it was lifetime
20 benefits.

21 Q What was -- what was the date of that,
22 approximately?

23 A I can't tell you that. I mean, I don't remember the
24 exact date, to be honest with you.

25 Q Do you recall if it was after 2000?

1 A That I can't tell you because I probably didn't see
2 them that much after 2000 because I wasn't in the
3 plant at that time, I was a rep at that time.

4 Q Do you recall if it was after 1989?

5 A I think I have. I mean -- but I can't -- once
6 again, I'm not going to sit here and say I
7 absolutely know the date because I -- I don't. If I
8 did, I'd tell you.

9 Q Did you see anything in the drafts that we talked
10 about a few minutes ago, that you interpret as
11 guaranteeing lifetime vested benefits?

12 A Well, I didn't completely go through each one of
13 those drafts, if that's what you're asking me. I
14 rely on -- and I was indoctrinated from that plant,
15 I rely on the 1992 agreement. I mean, that's what
16 '92 was all about, all right? 1992, was to secure
17 for the active future retirees and it was going to
18 remove a lot of the FASB liability of anybody hired
19 after a certain point in time. I mean, we spent --
20 there was tons of time, energy, effort, money spent
21 to do that. I mean, I don't know how else to say
22 that. I mean --

23 Q Well, if -- if -- let me just ask you this. I'm
24 interested in your -- in your view on it.

25 If the company was agreeing that retiree

1 health care benefits were lifetime vested, how do
2 you explain the statements that we've looked at
3 where the company, in one instance, in an agreement
4 that was signed by the UAW, in other instances in
5 agreements that were tendered to the UAW kept saying
6 that they didn't agree to that?

7 A Because people take different positions when they
8 come into those positions. I mean, you got
9 different people coming in and out from the company
10 side of it. I mean, I can't explain it. I can't
11 speak for them. I don't know why they took the
12 position that they took. I can only tell you that
13 my conversations, my understanding of it and what
14 1992 was all about. I mean, I didn't really ever
15 think I'd be sitting here talking about retiree
16 benefits, because it's -- we clearly took care of
17 that in '92. There's no doubt. If there is any
18 discrepancy at all, '92 should have took care of all
19 that. We removed the FASB liability after people
20 hire in after a certain date.

21 Q Well, do you -- do you -- have you seen anything in
22 the 1992 -- we saw in the -- we saw in Exhibit -- in
23 Exhibit 12. Do you have that in front of you? It's
24 the agreement on modification and extension of
25 existing labor contract.

1 A I have it in front of me now.

2 Q Okay. And we saw that's the one that was -- that
3 was executed on 27th date of September 1990. And we
4 saw in there the statement that this arrangement
5 does not prejudice the Union's position that current
6 retirees have lifetime vested benefits nor the DTP
7 Muncie Plant's position that current retirees do not
8 have lifetime vested benefits.

9 Do you recall anything in writing
10 subsequently that was agreed to by the Union and the
11 company, where the company abandoned that position?

12 A Outside of the '92 agreement that took away the FASB
13 liability. I mean, I --

14 Q I thought you told me --

15 A My understanding -- my understanding of it, you're
16 not going to change my, I guess, understanding of
17 the lifetime benefit. I mean I understand where
18 you're going with that. I'm just telling you,
19 that's how I grew up at that plant. That's what it
20 was all about. I don't know why the guy -- I wasn't
21 there, I didn't sign the extension. I know it was
22 to get these groups together so we could try to
23 tackle some of the problems it was facing, not just
24 them, but in other plants. We just tried to be
25 proactive about it and go in and try to secure the

1 best benefits we could, to try to take care of that
2 so we could put the company in a better position,
3 just to be real honest with you. And that's what we
4 accomplished with '92, we thought, at the time.
5 Obviously things change or the plant would still be
6 there.

7 Q Well, I think you're -- correct me if I'm wrong, but
8 I think you had testified that the -- that the '92,
9 '95, 98 agreements were not executed.

10 A The agreements -- if you're talking about the health
11 care -- that's what I'm --

12 Q The health care agreements, right?

13 A They weren't signed. Now, whether they were -- I
14 guess never even said in the statement there that
15 they were paying out benefits so I don't know if you
16 call that execution or not.

17 Q How do you define execution?

18 MR. RADTKE: Objection, calls for a legal
19 conclusion.

20 BY MR. BURCHFIELD:

21 Q How do you define --

22 A I don't know that I would. That's why I just said,
23 I don't know if you would call doing these things as
24 execution or does it require signature. I don't
25 know. I don't know. I'm not a legal expert on

1 that.

2 Q Well, are you aware of any signed health insurance
3 agreement from '92 or '95 or '98?

4 A Outside of the agreement -- we signed saying that we
5 did the health care agreement, but we didn't have
6 the booklet attached to it. So, no, I guess I
7 don't. I mean --

8 Q So you can't point me to anything after -- you can't
9 point me to anything, I take it, after this document
10 in 1990 in which BorgWarner signed something that
11 said we agree that retiree health benefits are
12 lifetime vested?

13 A Outside of conversation, I can't tell you what year
14 the pamphlets were. I mean, whenever the guys would
15 go out. I mean, I don't know what year.

16 MR. BURCHFIELD: Okay. Why don't we break
17 for lunch. Let's take, what do you think, 45
18 minutes?

19 MR. MACEY: Yeah.

20 (Whereupon, at 12:38 p.m., a luncheon
21 recess was taken.)

22 * * * * *

23 A F T E R N O O N S E S S I O N

24 (1:30 p.m.)

25 Whereupon,

1 MICHAEL AILES

2 was called for continued examination, and having
3 been previously duly sworn was examined and
4 testified further as follows:

5 MR. BURCHFIELD: I'm going to ask the
6 reporter to mark a document entitled "Health
7 insurance agreement between BorgWarner Automotive
8 Diversified Transmission Corporation Muncie Plant
9 and International Union UAW reflecting '95 changes
10 to the '92 agreement."

11 And this is Exhibit 16.

12 (Ailes Deposition Exhibit Number 16 was
13 marked for identification.)

14 RESUMED EXAMINATION BY COUNSEL FOR
15 DEFENDANT

16 BY MR. BURCHFIELD:

17 Q Mr. Ailes, you have in front of you Exhibit 16?

18 A Yes.

19 Q There is a document attached at the end of this
20 which may not be a part of this agreement. But it
21 was in the documents as I received them, the last
22 three pages of the document. So let's just ignore
23 that for now and talk about the document that has
24 the Bates labels on it beginning at 855 through 996,
25 typescript numbers up to page 137. Okay?

1 A All right.

2 Q And let me just ask you to look at page 873. And
3 you see in the last paragraph of that page the
4 statement, "On March 12, 1998 this agreement may be
5 terminated, modified, changed or continued in the
6 same manner as provided in Article 16 of the
7 aforesaid collective bargaining agreement between
8 the parties hereto dated March 12, 1995."

9 Do you see that?

10 A Yes.

11 Q And then also over on page 991, under "Future of the
12 plan", as before in the prior draft of the agreement
13 it says, "Although BorgWarner Automotive Diversified
14 Transmission Products Corporation Muncie Plant
15 expects and intends to continue the plan
16 indefinitely, it reserves the right to modify,
17 amend, suspend or terminate the plan or the group
18 policies therein in accordance with the provisions
19 of the health insurance agreement. An individual's
20 insurance coverage terminates when that person is no
21 longer eligible, or when the group insurance
22 policies terminate, whichever happens first."

23 Do you see that?

24 A Yes.

25 Q Now, this -- this is the -- this, at least, seems to

1 be the draft of the -- of the agreement, a draft to
2 incorporate the agreement that was reached during
3 the bargaining cycle during which you served as
4 bargaining chair; is that right, '95?

5 A It appears that way, yes.

6 Q So do you recall receiving this draft, a draft from
7 BorgWarner that reflected its view of what happened
8 in the bargaining session?

9 A I'm going to say I probably did get a copy of it.
10 So I guess the answer to your question would be
11 yes.

12 Q Okay. And what would you have done with that draft?

13 A Well, it depends on what they did simultaneously.
14 If they was giving me the copy with the other copy
15 going to Social Security Department or the UAW, I
16 might have looked at it. I might have marked on it
17 if there is any changes I thought, or I might have
18 called my rep to make sure that they in fact
19 received it up there or where was we at in the
20 process.

21 Q As we discussed before lunch, it appears that --
22 that this agreement was never signed by both
23 parties; is that your understanding?

24 A Yes.

25 Q And my question for you is whether either of the two

1 passages that I just read to you, bore upon the
2 UAW's decision not to sign the agreement?

3 A I don't really know that. Once again, it was until
4 we got the okay from the Social Security Department,
5 we weren't going to sign that document. So if they
6 had an objection, which if you look back at the --
7 because I'm assuming this is part of the '96 -- or
8 the one where it was marked up that you showed me
9 earlier, then there was more than just that passage.
10 There are different passages as she was going
11 through it. So that -- we wouldn't have signed it
12 based on that.

13 Q Well, would you -- do you have a view on whether, if
14 everything else in the agreement were acceptable,
15 the UAW would have executed an agreement, signed an
16 agreement with those two provisions I've just read
17 to you in it?

18 A I can't really answer -- I can't speak for them. I
19 mean, I'm assuming if everything was as we
20 negotiated, everything was as they seen it in the
21 final draft or document, I'm assuming they would,
22 but I can't speak for them. Like I said, we've
23 always -- unless we get the okay from there, we're
24 not signing the thing. We always wanted to make
25 sure we had their blessing, or they checked it out.

1 Q Having seen some passages in these draft agreements
2 as well as the -- what we refer to as the agree to
3 disagree language from the 1992 document that was
4 signed, do you remember what I'm talking about?

5 A Uh-huh. Yes. I'm sorry.

6 Q In light of all that, do you recall any discussions
7 within the UAW about whether it should try to seek a
8 more definitive understanding with the company about
9 whether retiree health benefits were vested or not?

10 A Our position was it was always vested, it's always
11 been that position. And we didn't even have to --
12 the only thing that brought this I guess to where
13 we're at today, is up until they done -- don't hold
14 me to the date, 2005, 2006 because there was a
15 lawsuit put in, there was changes made that got
16 reversed back and then they got to where this is
17 today, okay, then more likely for whatever reason,
18 right, wrong or indifferent, it was a non-issue
19 because things were going as we understood it.
20 Retiree benefits were not being adversely affected.
21 They did not go into unilateral change. So I can't
22 really speak as to, you know, going through the
23 times, once again, I didn't -- I won't sign nothing
24 until the International gives me their blessing. We
25 never had any reason -- I mean, even with the

1 verbiage -- I mean, companies take positions all the
2 time. It doesn't necessarily mean I agree with it
3 and don't necessarily mean you get into a fight each
4 one each time, not until our members are adversely
5 affected. In this case, they're adversely affected.

6 Q Do you think -- do you personally think that there
7 was an agreement between BorgWarner and the UAW that
8 retiree health benefits were lifetime vested?

9 A Do I think that?

10 Q Yes.

11 A Yes, I absolutely believe that.

12 Q And in light of the 1992 agree to disagree language,
13 on what do you base your understanding?

14 MR. RADTKE: I'm going to object to the
15 form. And I believe that's a misstatement of the
16 facts.

17 MR. BURCHFIELD: Is it 1990?

18 MR. RADTKE: Yeah, I believe so.

19 MR. BURCHFIELD: Yeah, okay.

20 BY MR. BURCHFIELD:

21 Q In light of the 1990 agree to disagree language, on
22 what do you base your view that there was an
23 agreement?

24 A One, because of how it was -- it's how I grew up in
25 the plant, for lack of better terminology. That's

1 how it was always treated. We seen the documents
2 that was given retirees as they went out, and
3 especially in light of 1992 with the FASB. I mean,
4 I don't know any other way to say -- I know nothing
5 different than they were lifetime benefits and they
6 weren't challenged until 2005 or 2006, whatever --
7 don't hold me to the dates, that we had one set they
8 changed, got back and then where we're at today.

9 Q Well, Mr. Ailes, let me -- let me approach this in
10 somewhat of a different way. There could -- there
11 could hypothetically be a written document somewhere
12 signed by both the UAW and BorgWarner that says
13 retiree health benefits are lifetime vested,
14 inalterable. Are you aware of any such document?

15 A Well, I guess the document I would think about is
16 it's actually under the pension, all right, where
17 there is a letter that says pension are guaranteed
18 lifetime benefits. And as the health agreement ties
19 into you got to be eligible 30 and out, your 60/10,
20 whatever, I guess that's why I kind of base my --
21 besides growing up that way, that they're lifetime
22 benefits and never been challenged until this recent
23 -- the last two times that they have done it.

24 Q Okay. And I understand -- I understand that
25 position, and I suspect Mr. Radtke will be making

1 that argument down the road. But I'm asking -- my
2 question is a little bit different; and that is:
3 Are you aware of any written document in which the
4 UAW and BorgWarner stated, in substance, that
5 retiree health benefits are lifetime vested?

6 A I guess as such stated the way you're saying, I've
7 not seen that, I don't guess.

8 Q Okay. And neither have I, by the way.

9 Another possibility would be that there is
10 a --

11 A Outside -- wait a minute, outside the pamphlets, now
12 keep in mind it was given out as a retiree went out,
13 that did say lifetime benefit.

14 Q It said that term, is that your --

15 A Yes.

16 Q Okay. And we'll -- I think we may be able to look
17 at one of those. I'm getting one of those. But
18 those pamphlets were not -- were not signed by both
19 parties, were they?

20 A Well, they was given out by the company, by the
21 company's benefits people at the time that I'm
22 signing -- not me particularly, but the person is
23 signing I'm going out. And you know -- and I don't
24 know the verbiage because I didn't set at every one
25 of them. I didn't set at each one. The feedback to

1 me was, here, I've got this saying this and that's
2 what they told me. Then I rely back to further what
3 we talked about Glen Eckelman's and my conversation
4 about they know what they got when they go out.

5 Q Okay. But, as you sit here and that -- that is a
6 document, and we'll look at one of those, but you're
7 not aware of any document that is signed by
8 BorgWarner and the UAW that says benefits are
9 lifetime vested guaranteed?

10 A I don't recall. I'm not aware of that.

11 Q You know, another possibility would be an agreement
12 that says UAW and BorgWarner agree that benefits are
13 not lifetime vested guarantee. I take it you're not
14 aware of such an agreement on that either?

15 A I'm assuming if you had that you'd already show that
16 to me, so...

17 Q That would probably be fair.

18 A As if I had the other, I would show it to you and we
19 wouldn't be here.

20 Q And the other possibility is that there was simply
21 no agreement between -- between the parties and they
22 could never -- they could never get it written down
23 in a way that both sides could agree to it?

24 A I'm going to disagree with that statement.

25 Q And why so?

1 A Because I believe, based on the history, based on my
2 time bargaining contracts, based on this connect
3 with the pensions, based on 1992, that they in
4 fact -- and the pamphlets, they in fact are lifetime
5 benefits. I mean, I'm never going to believe
6 nothing different. I'm not trying to be
7 argumentative, but that's just how that is. I mean,
8 you know, if so, then -- well, I'm not going to get
9 into it. It's -- in my opinion then, if they felt
10 like they had that right, there's a whole lot of
11 wasted time going through a bunch of stuff in 1992
12 when the whole purpose was to try to get that FASB
13 liability off the books. And years and years down
14 the road that in fact is probably what would happen,
15 unless they had done something different.

16 Q Well, is it -- is it -- well, in light of that, how
17 do you explain the language in the 1990 agreement?

18 A I mean, I wasn't there. I can't explain that. I
19 mean, the only -- my only conclusion to that was
20 like they did with a lot of things, I guess they
21 agreed to disagree because they didn't want to stop
22 there. It was the company that wanted the ACME
23 agreement. They're the ones that wanted to go
24 forward. So I'm assuming when one took a position
25 one, we just -- I can't tell you that. I wasn't

1 there, I don't know.

2 Q Is it your -- is it your position speaking now on
3 behalf of the UAW that if benefits -- if retiree
4 health benefits were vested for a group of retirees
5 retiring say in the '80s, that the company can never
6 change that arrangement for people who retire in the
7 '90s?

8 A I guess my -- I guess my answer would be, yes, I
9 don't think they can. I believe as long as that's
10 tied as ours -- as that is, that particular
11 agreement is, and I made the qualifying, when I go
12 out I'm entitled to those benefits. You know,
13 unless they produce a document that both parties
14 could agree that they're not, which ain't never
15 going to happen. Why would we? Why would we give
16 up a benefit like that? We would not.

17 So, my answer would be, no, they can't
18 change it. Not unilaterally change it.

19 Q Is it your view that the company is prevented, if it
20 grants vested benefits to retirees in the '80s, is
21 it your view that it can't make changes in the
22 benefits for people who retire during the '90s?

23 A I'm trying to make sure how to answer this, to be as
24 honest as I can. Anybody that's out prior to our
25 negotiations, they're out, they're retirees. Can't

1 change it, all right? Then we go in -- all I went
2 in with the mindset, whether it was at the Local
3 Union or wherever was at, that they're vested, we're
4 going now from this point forward is this group of
5 people. I got X amount of people in the plant, X
6 amount of people is going to retire and try to make
7 the best benefit we can for those people, okay?

8 That's why when you get into -- well, I
9 don't want to get too verbiage (sic) on it, but when
10 you start looking at plans, you know, I mean our
11 plan, just be real honest with you, probably drives
12 people crazy because of the different levels.
13 Because it all -- when you go out, here's this one;
14 when this person goes out, here's this person, and
15 so on, over the course of a long period of time.

16 Q Is it the UAW's position that the -- that the
17 benefits of people who have already retired can't be
18 changed even if the UAW were to agree to it?

19 A I would -- well -- I think they can be enhanced or
20 made better, but I don't think you can take that
21 basic away, whatever that may be.

22 MR. BURCHFIELD: Let me ask the reporter to
23 mark as Ailes Exhibit 17 a document entitled,
24 "BorgWarner Automotive Diversified Transmission
25 Products Corporation, Muncie Plant and Local 287 UAW

1 Insurance Highlights of the 1998 Negotiations."

2 (Ailes Deposition Exhibit Number 17 was
3 marked for identification.)

4 MR. MACEY: This is 17?

5 THE WITNESS: Yes.

6 MR. BURCHFIELD: I'm glad to see I'm not
7 the only one having trouble counting.

8 BY MR. BURCHFIELD:

9 Q Do you have in front of you Exhibit 17, Mr. Ailes?

10 A Yes.

11 Q This is -- this purports to be highlights of the
12 1998 contract negotiations. Now if I understand
13 correctly, you were not involved in those
14 negotiations; is that correct?

15 A That's correct.

16 Q Have you ever seen this document so far as you can
17 tell?

18 A I'm not real -- I'm going to assume I've come across
19 it some time or another during the course of time.

20 Q And in the 1998 negotiations there was, again, not
21 an executed, mutually signed health insurance
22 agreement; is that right?

23 A Yes.

24 Q Let me ask you to look at a couple of passages in
25 this -- in this document. And the first passage is

1 on the second page of the document, page 1144.

2 A Okay.

3 Q And the heading is, "Disclaimer notice." And it
4 says, in the first paragraph there, "For further
5 details you may refer to the official plan documents
6 including the health insurance agreement which
7 describe the provisions in more detail and solely
8 govern with respect to your eligibility and
9 participation in the health plan of the company."

10 Do you see that?

11 A Yes.

12 Q As we just discussed, there was not an executed
13 health insurance agreement for 1998, was there?

14 A Not that I'm aware of.

15 Q And then in next sentence says, "The company and
16 Union may, through the process of negotiations,
17 modify, amend, suspend or terminate these plans in
18 whole or in part."

19 Do you see that?

20 A Yes.

21 Q And then it also says, if you look at page 147,
22 under overview headings, the overview of the
23 insurance plan, second paragraph there, it says,
24 "The company and Union may, through the process of
25 negotiations, modify, amend, suspend or terminate

1 these plans in whole or in part."

2 Do you see that?

3 A Yes.

4 Q Do you -- is it the UAW's position that -- that
5 those statements I've just read to you are accurate?

6 A I don't know that they're accurate.

7 Q All right. Is it the UAW's dispute that they're
8 inaccurate?

9 A I guess if you're trying to make me say as a whole,
10 then I guess I'd say it is inaccurate then, I guess.

11 Q Are you aware of any written objection by the UAW to
12 that language?

13 A I don't know what transpired with this particular
14 '98 thing. I mean, I assume the company put this
15 together. I don't know who they give it to. I
16 mean, I don't know if they did or not. At that time
17 when we was given this, I don't know, I wasn't
18 there.

19 Q Then do you see at page 1160 -- the language that we
20 looked at before, under the heading "Future of the
21 plan."

22 A I see the language you're talking about.

23 Q We discussed that before. Anything -- anything to
24 add to what you previously testified about that
25 language?

1 A Nothing left to add, I guess. Added something to it
2 that I don't --

3 Q What are you referring to?

4 MR. RADTKE: I'm going to object to that
5 question because there's different language.

6 BY MR. BURCHFIELD:

7 Q Are you talking about the provision about "By action
8 of either its board of directors or person
9 designated by resolution of such board of
10 directors"?

11 A That's one thing that caught my eye, if that's what
12 you're asking me.

13 Q Is there anything that you recall as being
14 different?

15 A I didn't compare -- I guess I could get it out and
16 compare it line-by-line if you want me to.

17 Q If you want to, you can, but, the basic point is,
18 does it remain the UAW's position that this
19 language, as stated here, is -- would be
20 objectionable to the UAW?

21 A I would say yes.

22 Q Okay. And you view this language, I assume as you
23 did the earlier language, as being inconsistent with
24 the notion of lifetime vested benefits?

25 A I still believe it's lifetime benefits. And that's

1 not what this says, I guess I'll put it that way.

2 Q So it's inconsistent?

3 A Well, I'm not -- not going to put words in my mouth,
4 but I just -- it is what I said.

5 MR. BURCHFIELD: Okay. Let's look at
6 the -- let's look at a document entitled, "Tentative
7 agreement November 28, 2000. And this will be Ailes
8 Exhibit 18.

9 (Ailes Deposition Exhibit Number 18 was
10 marked for identification.)

11 BY MR. BURCHFIELD:

12 Q And Mr. Ailes, you were involved -- you have in
13 front of you Exhibit 18?

14 A Yes.

15 Q And you were involved in the 2000 negotiations; is
16 that right?

17 A Yes.

18 Q And am I correct that in the 2000 negotiations, the
19 earlier agreement done in -- let me start again.

20 Do you -- do you recall that in the 1992
21 negotiations there was an agreement that the
22 deductible and stop loss would increase at a rate of
23 five percent per year?

24 A That's correct.

25 Q And that was -- that agreement was going to last up

1 to 2003; is that right? From January 1, 1993 --

2 A December 31st of 2002.

3 Q Okay. So if you look on the second page of Exhibit

4 18, do you see there where it says "Increased

5 deductible stop loss five percent per year beginning

6 in 2003"? It's about a third of the way down on the

7 page 5330.

8 A 5330. (Reviewing.) Am I missing this?

9 Q Right here.

10 A Oh, okay. I got you.

11 Q Okay, you see that? Am I correct that the five

12 percent per year escalator for deductibles and stop

13 losses was renewed in 2003 for an additional period

14 of time?

15 MR. RADTKE: Object to the form of that

16 question.

17 BY MR. BURCHFIELD:

18 Q I can tell by the look on your face you don't

19 understand the question. Let me rephrase it.

20 That's my fault.

21 The original agreement on the five percent

22 escalator expired December 31, 2002, right?

23 A Correct.

24 Q And in the 2000 negotiations, did the company -- did

25 the company and the Union agree to extend that

1 escalator beyond 2003?

2 A Yes.

3 Q And for how long beyond 2003?

4 A To be real honest, I don't remember, to be honest.

5 I don't remember exact duration. I can't remember
6 how far out it went.

7 Q Am I correct that with regard to the -- with regard
8 to that escalator, the five percent increase in
9 deductibles and stop losses applied to all retirees
10 after 1992?

11 A Depending on when they went out. I mean, it's true
12 that the stop losses and deductibles increased, but
13 depending on when they went out.

14 Q Well, if the -- if someone -- if someone retired in
15 1995, they were subject to the escalator for --

16 A Not necessarily.

17 Q And why not?

18 A Well, one, there -- there was negotiated where a
19 person, depending on what year -- again, that's why
20 I can't -- they had a choice of plans, okay? They
21 could have went prior to a certain time they had
22 this plan, all right. Now my understanding of --
23 I'm telling you my understanding of the increases,
24 was that if it -- I went out in year 3, then I --
25 this is my stop loss and my deductible, all right.

1 And if I went out in year four, mine may be
2 different than the one that went out prior to that.

3 Q Okay. Your point is well taken. The -- the
4 escalator applied only to those retirees that were
5 in the PPO, was that your understanding?

6 A That would be correct, I think.

7 Q Okay.

8 A But -- see that -- that's why I'm saying there was
9 point in time where people had a choice and I don't
10 have without -- it's been awhile back to say when
11 was that cut-off. I could have been in the PPO
12 today and I retired, but I didn't go into the PPO
13 because I had a choice.

14 Q Right.

15 A But I don't know exactly all that.

16 Q Well, let me -- let me suggest to you that there
17 was -- that there was -- that there are people who
18 retired up to 1995, could elect PPO or non-PPO, and
19 then after 1995, PPO was mandatory. Is that
20 consistent with your understanding?

21 A That may be correct. That could be correct.

22 Q Something like that. The record will show whatever
23 it does.

24 A Right. Right.

25 Q Let's not get bound up in that.

1 A Right.

2 Q My question for you is, if someone retired in the
3 PPO in, say, 1996, would that person be subject to a
4 five percent escalator for every year the escalator
5 remained in effect?

6 A That's what I'm saying. No, I would say no.
7 Whatever they went out with. If they went out with
8 -- that's what I was trying to say. Let's say you
9 are in the PPO --

10 Q Right.

11 A -- if I went out in 1996 here's my stop loss
12 deductible. If I went out in 1998, here's my stop
13 loss deductible.

14 Q So in other words, whatever the stop loss was, the
15 time that I retire or you retire from the Muncie
16 Plant, that's the stop loss and deductible that you
17 have for the rest of your life?

18 A That's my understanding.

19 Q And then when the stop loss was -- for each -- each
20 year the stop loss and deductible was higher, so the
21 people who retire later have a lifetime stop loss
22 and deductible that is higher than the ones who
23 retired earlier?

24 A That could happen. I believe that could happen.

25 Q Now, in the 2000 agreement where the escalator was

1 renewed, was it your understanding that that
2 escalator would apply only up until the time someone
3 retired and then they would have the same deductible
4 and stop loss for the rest of their lives?

5 A You mean -- I guess I want to make sure I understand
6 what you're asking me. We renewed it. It was
7 renewed. Are you asking me if somebody went out
8 after that, they would go under the stop loss and
9 deductible and then that was theirs; if you're
10 asking me if that's what I believe, yes.

11 Q Okay. Do you know -- do you know whether the
12 company applied it that way, that it -- that a
13 person's stop loss and deductible remained the same
14 that it was at the moment they retired and never --
15 never was changed thereafter under the '95 and 2000
16 agreements?

17 A You mean do I know that they done it that way?

18 Q Right.

19 A I guess I'm not sure. I've never had anybody
20 complain to me, so I'm assuming it was that way.
21 I'll put it that way.

22 MR. BURCHFIELD: Give me a second. We'll
23 find it later. I'm going to ask the reporter to
24 mark as Ailes Exhibit 19 a document entitled,
25 "Clarifications of tentative agreement reached

1 between BWD -- BWTPC and UAW Local 287 April 8,
2 2005."

3 (Ailes Deposition Exhibit Number 19 was
4 marked for identification.)

5 BY MR. BURCHFIELD:

6 Q And Mr. Ailes, you have in front of you Ailes
7 Exhibit 19?

8 A I got Exhibit 19, yes.

9 Q Okay. You participated in the 2005 negotiations; is
10 that right?

11 A Yes.

12 Q As the International rep?

13 A Yes.

14 Q And you see item number two there is -- it says,
15 "The annual major medical increase of up to ten
16 percent can affect stop loss or deductible, but
17 cannot be more than a maximum of ten percent total
18 out-of-pocket." Do you see that?

19 A Yes.

20 Q What do you understand that to mean?

21 A That your deductible and stop loss together is not
22 going to be -- you're not going to get more out of
23 your pocket than a ten percent increase, but I don't
24 know who put this together as far as this.

25 Q Was there a signed agreement that came out of the

1 2005 negotiations?

2 A I think there was. The only reason I say it,
3 because I know at one time when one of these came
4 out, there was some discrepancy and I don't know
5 which one is which, because the company had put out
6 almost identical to this, and I'm not saying this is
7 that one, I'm just saying at one time there was a
8 discrepancy on a sheet the paper looked like this.

9 MR. BURCHFIELD: Okay. Let me ask the
10 reporter to mark as Ailes Exhibit 20 the plant
11 shutdown agreement.

12 (Ailes Deposition Exhibit Number 20 was
13 marked for identification.)

14 BY MR. BURCHFIELD:

15 Q Mr. Ailes, do you have in front of you Exhibit 20?

16 A Yes.

17 Q You participated in the negotiations of this
18 document; is that right?

19 A Yes.

20 Q And you signed it on page 193; is that correct?

21 A I need to take a time-out for a minute. I need to
22 talk to you, Barry.

23 MR. MACEY: But answer that question while
24 the question is pending and then we'll take a
25 break.

1 THE WITNESS: That's got to do with that,
2 what he's asking me about, me signing this. I can
3 tell you I signed it.

4 MR. BURCHFIELD: Okay.

5 MR. MACEY: Okay.

6 (Off the record at 2:12 p.m.)

7 (Back on the record at 2:14 p.m.)

8 BY MR. BURCHFIELD:

9 Q Mr. Ailes, I believe the last question I asked you
10 was whether that's your signature on page 193 of
11 Exhibit 20. And your answer was that it is?

12 A That's correct.

13 Q Would you like to qualify that answer in any way?

14 A Membership ratified it, I signed it.

15 Q Okay. Did you sign it under objection?

16 A Membership ratified it, I signed it.

17 Q That's not quite responsive to my question. Did you
18 object to signing it?

19 A I signed it.

20 Q Did you have any choice whether to sign it?

21 A I signed it. I don't know what you want me to say.

22 I signed it. It's my signature.

23 Q It appears as though you're not happy about the fact
24 that you signed it?

25 A Well, I'm not going to get into it. I signed it.

1 I'm going to leave it at that.

2 Q Is this -- do you have any reason to believe that
3 this is not a binding commitment?

4 A I'm not saying that at all. I think it's a -- I got
5 to take a break. Closed that fucking plant down. I
6 knew every one of the people in that plant.

7 (Off the record at 2:14 p.m.)

8 (Back on the record at 2:21 p.m.)

9 BY MR. BURCHFIELD:

10 Q We were talking about the -- about Exhibit 20.

11 A Correct.

12 Q And I just wanted to ask you about the provision on
13 page 192, Mr. Ailes. Are you there with me?

14 A Okay.

15 Q In paragraph 2 it says, "The company and the Union
16 have a dispute with respect to the nature of the
17 company's obligation to provide post-retirement
18 health care benefits to employees who retired prior
19 to February 23, 2009 and their dependents. Nothing
20 in this plant shutdown agreement affects the party's
21 rights or positions with regard to that dispute."

22 Do you see that?

23 A Yes.

24 Q And do you recall it being discussed during the --
25 during the negotiations that led to this agreement,

1 that the company -- the company and the Union did
2 have a dispute about whether post-retirement health
3 care benefits were vested?

4 A Yeah, there was a dispute.

5 Q And we earlier saw language, and if you could look
6 back at Ailes Exhibit 12, which is the document
7 executed on September 27th, 1990, and on page 427 of
8 that document there is the statement we looked at
9 before, "This agreement does not prejudice the
10 Union's position that current retirees have lifetime
11 vested benefits nor the DTP Muncie Plant's position
12 that current retirees do not have lifetime vested
13 benefits."

14 Do you see that?

15 A Yes.

16 Q Isn't -- isn't that statement in Exhibit 12 saying
17 substantially the same thing as the statement on
18 page 192 that we read in Exhibit 20?

19 A That there's a dispute?

20 Q Yes.

21 A Both of them are saying that, yes.

22 MR. BURCHFIELD: Let me ask you to look at
23 document dated November 23, 1992, which is a letter
24 from Laura Hess to John Daffara. Here it is.
25 Great. And this will be Ailes Exhibit Number 21.

1 (Ailes Deposition Exhibit Number 21 was
2 marked for identification.)

3 BY MR. BURCHFIELD:

4 Q Do you have in front of you Exhibit 21?

5 A Yes.

6 Q In the first paragraph of this letter, Ms. Hess
7 wrote at the request of Local 287, "I have reviewed
8 the 1989 draft summary plan description for
9 insurance and pension benefits. Based on my review
10 and the changes the company has made in relationship
11 to that review, the document is now acceptable."

12 Do you see that?

13 A Yes.

14 Q And then there is an attachment to it. And this is
15 the way that it was given to me. Do you know
16 whether that attachment relates to the letter or
17 not?

18 A I don't know.

19 Q Page 198 suggests that it's effective September 1,
20 1992 through March 11, 1998. That would suggest,
21 wouldn't it, that this is not the attachment that
22 Ms. Hess is referring to?

23 A I mean, I don't know how to answer that I guess. I
24 don't know how to answer that.

25 Q Do you recall in the 1992 negotiations that there

1 was a requirement imposed to use generic drugs when
2 they were available?

3 A What year?

4 Q 1992.

5 A Yes. Yes.

6 Q And am I correct that that requirement to use
7 generic drugs applied to all retirees?

8 A Well, I think there was a qualifier with that. I
9 can't tell you exactly what that was.

10 Q If --

11 A Because they had -- they had the opportunity to come
12 in with PPO when the PPO was established at that
13 time, but there was also a lot of things connected
14 with that as far as our pharmaceutical or the RX
15 plan that you didn't see in most plans. Dispense as
16 written is one of them. So I mean, I'm probably not
17 giving you the answer you want, but I don't know how
18 to answer specific. Could they get generic drugs or
19 was they getting the generic drugs, yes, but that's
20 because there was some enhancements put into other
21 aspects of the plan for them, my recollection.

22 Q Well, on the generic drug requirement, do you recall
23 that that was applicable even to people that had
24 retired before 1992?

25 A I believe it was. Once again, it's one of them. I

1 think there was some qualifiers. There was some
2 things to enhance it to encourage generic use.

3 Q Do you have any -- and this may have been -- this
4 may be somewhat before your time, Mr. Ailes, and if
5 it is, you can say so. But in Ms. Hess's letter,
6 the first page of Ailes Exhibit 21, it's dated
7 November 23, 1992. And she is signing off on the
8 1989 SPD.

9 Do you -- do you know what the reasons were
10 for her signing off on it just as the next agreement
11 was about to become effective?

12 A I don't know that.

13 MR. RADTKE: I object to the form of that
14 question.

15 THE WITNESS: I don't know.

16 BY MR. BURCHFIELD:

17 Q Mr. Ailes, are you aware of situations in which
18 the -- during the collective bargaining
19 negotiations, the benefits that would otherwise have
20 gone to active employees were reduced in order to
21 provide enhanced benefits to the retirees?

22 A I guess I don't understand what you -- are you --
23 you got a specific?

24 Q Yeah, let me give you an example.

25 MR. BURCHFIELD: Let me ask the reporter to

1 mark as Ailes Exhibit 22 a letter from Mr. Reffett
2 to Mr. Reising dated October 22, 1990. And while
3 you're looking at that, I'll ask the reporter to
4 mark as Ailes Exhibit 23 a memorandum from Laura
5 Hess to Social Security staff dated August 17,
6 1992.

7 (Ailes Deposition Exhibit Number 22 was
8 marked for identification.)

9 (Ailes Deposition Exhibit Number 23 was
10 marked for identification.)

11 BY MR. BURCHFIELD:

12 Q Mr. Ailes, let's start with Exhibit 22, which is the
13 October 22, 1990 letter from Mr. Reffett to Mr.
14 Reising.

15 Here it says, "In light of the recent
16 discussion on the vision plan for Local 287 UAW
17 retirees, the Union's position stands that retirees
18 are to be included with active members negotiated
19 September 7th, 1989 agreement, the 97 cents paid in
20 COLA freeze was to offset this cost."

21 Do you see that?

22 A Yes.

23 Q And my question for you is: Is this an instance in
24 which benefits that would have been payable to the
25 active employees were used to obtain benefits for

1 current retirees?

2 A I don't know that.

3 Q Okay. Let's look at the other document from Ms.
4 Hess. This is Ailes Exhibit 23. And in the first
5 paragraph it says, "In 1989 our members went on a
6 lengthy strike over the issue of health care for
7 themselves and retirees."

8 And then stop right there. You were at
9 BorgWarner during that strike; is that correct?

10 A That's correct.

11 Q That was -- that strike went on for about 52 days;
12 is that right?

13 A Something like that, yeah.

14 Q It was -- is this correct, that it was primarily
15 about the issue of health care for actives and
16 retirees?

17 A I believe so. I mean, I wasn't actively involved in
18 those talks. You know, so I only got what they
19 was -- but that's my understanding.

20 Q Okay. And in the next sentence says, "The strike
21 was settled with the agreement to divert 97 cents
22 COLA towards the cost of retiree health care."

23 Do you see that?

24 A I see it, yes.

25 Q And does that trigger any recollection about --

1 about diversion of benefits that would have
2 otherwise gone to the actives to fund retiree
3 benefits?

4 A I remember the 97-cent diversion, but I don't know
5 if it was limited to just retiree health care. I
6 mean, I don't know that. Always my understanding it
7 was to offset health care.

8 Q Okay. But the 97 cent diversion was coming from the
9 actives in the event, right?

10 A That's correct.

11 Q Because the retirees weren't subject to that --

12 A Well, they weren't working in the plant.

13 Q Right. Right. Now, are you aware of any other
14 instances in which -- with regard to the BorgWarner
15 plan, benefits such as COLA increases or -- or
16 training funds or other benefits that would have
17 gone to actives were used in the negotiations to
18 obtain enhanced benefits for retirees?

19 A Only one I really recall is the -- we would divert
20 some COLA so retirees got a bonus every year.

21 Q The -- a bunch of the pension?

22 A No, it was like we would divert one cent or two
23 cent, it would go into this fund, it would
24 accumulate, and then once a year, they would give
25 eligible retirees a bonus check, you know.

1 Q Okay. Not specifically directed to health care
2 though?

3 A No. No.

4 Q Just money that they could spend however they wanted
5 to spend it?

6 A That's correct.

7 Q Okay. Anything else that you can recall about how,
8 through the negotiations benefits from the actives
9 were used in some way to enhance the situation of
10 people who had already retired?

11 A Not really. I mean, sometimes they would -- if --
12 just like the PPO, there was some benefits that they
13 could take advantage of. Not necessarily that the
14 actives had to give anything up for it. So I mean,
15 right off the top of my head I don't recall it. The
16 COLA is the biggest one I remember.

17 Q Do you recall anything going the other way, in which
18 the actives obtained some benefit that was the
19 result of reductions in retiree benefits?

20 A No, I don't believe -- I don't -- I don't think so.
21 Just thinking back to the different negotiations, I
22 don't think so. I mean --

23 Q To your knowledge, does the UAW have a policy
24 that -- that discourages or prevents the enhancement
25 of active benefits to the detriment of the retirees?

1 In other words, transferring economics from the
2 retirees to the actives?

3 A I -- I don't know if it's a policy -- me, personally
4 I've got a problem with that. I mean --

5 Q Are you aware of it ever happening? Not to say that
6 it did, but I'm just asking you if you're aware of
7 any instance in which the UAW has ever enhanced the
8 economic benefits to actives by negotiated
9 reductions for current retirees?

10 A Not off the top of my head I don't. I mean -- I
11 don't think so. I don't recall at this time, I
12 guess, if that happened.

13 Q But would that be a surprise to you if that had
14 happened?

15 A I guess it would be. I mean --

16 Q Are you aware of other situations in which the UAW
17 has diverted economic benefits from the actives to
18 the retirees, speaking beyond BorgWarner?

19 A I believe there has been. I mean, I don't know
20 specifics. I mean, you're always trying to take
21 care of retirees. I mean, that's where we're at is
22 because of them -- those folks.

23 MR. MACEY: Rather than you sit here while
24 I'm thumbing through my documents, I think I'm
25 coming down the stretch, but I've got some -- I know

1 I've got some more, but I'm not -- I don't want
2 to have you sit here while I'm --

3 MR. MACEY: Want to take five or ten?

4 MR. BURCHFIELD: Why don't we take ten.

5 (Off the record at 2:42 p.m.)

6 (Back on the record at 2:59 p.m.)

7 MR. BURCHFIELD: Okay. Let me ask the
8 reporter to mark as Exhibit 24 a document entitled,
9 "Retirement income program guide booklet dated
10 October 27, 1989."

11 And the last Exhibit, Ailes Exhibit 25, a
12 document entitled, "General summary of often asked
13 or emphasized items covered with employees upon
14 application for retirement", apparently from 1990.

15 (Ailes Deposition Exhibit Number 24 was
16 marked for identification.)

17 (Ailes Deposition Exhibit Number 25 was
18 marked for identification.)

19 BY MR. BURCHFIELD:

20 Q Okay. Mr. Ailes, do you have in front of you
21 Exhibits 8 and 9?

22 A 8 and 9 --

23 Q I'm sorry, Exhibits 24 and 25. Now I'm getting
24 confused.

25 A Yes.

1 Q Are these the booklets that you referred to earlier,
2 the pamphlets that you referred to earlier as
3 setting forth a right to vested lifetime retiree
4 health care?

5 A I'm not sure. They look -- they seem -- obviously
6 they're copies of some.

7 Q Let me --

8 A I'm not saying this big, I don't know without going
9 through it.

10 Q Let me ask you to look at the page on Exhibit 24
11 with the last four digits 6311. And you'll see a
12 heading there, "Group insurance at retirement."

13 A Okay.

14 Q It says, "Hospital and medical insurance benefits.
15 Your hospital and medical expense coverage will be
16 continued after your retirement pursuant to the
17 health insurance agreement."

18 A Wait a minute. I -- am I on the right...

19 Q You --

20 A You say 6331?

21 Q 6311.

22 A Oh, my bad.

23 Q Sorry.

24 A Okay. Now I think I got you.

25 Q Okay. It says, "Your hospital and medical expense

1 coverage will be continued after your retirement
2 pursuant to the health insurance agreement between
3 BorgWarner Automotive Diversified Transmission
4 Products Corporation Muncie Plant and International
5 Union, United Automobile, Aerospace and Agricultural
6 Implement Workers of America." And it's Local
7 Number 287, "Entered into on the 27th day of October
8 1989, the health insurance agreement."

9 Do you see that?

10 A Yes.

11 Q Is that the language that you're recalling?

12 A No, there's some -- I've seen other language. Put
13 it that way. Where it actually talks about -- I've
14 seen that language that says -- I mean, it even
15 covers, I thought, spouses for the rest of their
16 life, I mean...

17 Q Okay. So as you sit here today, this Exhibit 24
18 does not strike you as what you're thinking about?

19 A I don't think so, no.

20 Q Okay. Let's look at Exhibit 25. And the last page
21 of that also has a heading "Health insurance", and
22 it says, "Hospital, medical, surgery, diagnostic and
23 prescription drug will convert to the retiree health
24 plan at age 65, you will be eligible for Medicare.
25 Your health agreement has auto integration with

1 Medicare. You will continue to have the group
2 insurance, however, the Medicare payments will be
3 deducted from your normal allowances." Is that what
4 you're thinking about?

5 A No, sir, it's not.

6 MR. BURCHFIELD: Well, just for
7 completeness, let's look at a couple more. Ailes
8 Exhibit 26 will be -- Ailes Exhibit 26 will be
9 retirement income program guide booklet March 12,
10 1995.

11 (Ailes Deposition Exhibit Number 26 was
12 marked for identification.)

13 MR. BURCHFIELD: And Ailes Exhibit 27 will
14 be a general summary of often asked or emphasized
15 items covered with employees of one application for
16 retirement apparently from 1995.

17 (Ailes Deposition Exhibit Number 27 was
18 marked for identification.)

19 BY MR. BURCHFIELD:

20 Q And Mr. Ailes, I'm looking at on Exhibit 26, at the
21 page with the last four digits 9599.

22 A Okay.

23 Q And again, I'd just look at the language there,
24 where it says group insurance at retirement, I think
25 that's essentially the same language we looked at

1 before, and let me know if -- if that is the
2 language you're referring to?

3 A No, it's not what I remember seeing, so --

4 Q Okay. One more. Ailes Exhibit 27, and you look at
5 the last page of that document at the top it says,
6 "Health insurance" and the second paragraph under
7 that is language similar to what we've seen before.
8 Is that the language you're thinking of?

9 A That's not what I was thinking of when I talked
10 about the lifetime, so...

11 Q Okay. Can you describe for me, as precisely as
12 possible, the document you are thinking of; the
13 document or documents you are thinking of?

14 A Well, it was a pamphlet form, I mean, it -- if you
15 had this in a pamphlet, but it said in it that they
16 were lifetime benefits. And then there's another
17 portion, I read language where it talks about for
18 the rest of your life, is I think how the verbiage
19 goes. It just says for the rest of your life, which
20 to me is lifetime benefit. So I didn't see it in
21 neither one of these two you give me, so without
22 going through tons and tons of documents, I guess I
23 could look at that, if I ever come across it I'll
24 let somebody know, but that's what I remember
25 reading of it, so that's what I base it on.

1 Q Okay.

2 A One of the things I base my belief on.

3 Q Other than that language, the conversations you had
4 with Mr. Eckelman, and your observation that that's
5 the way things had been handled in the past, is
6 there anything else that you're relying on for your
7 view that --

8 A Yeah, '92 agreement. Not just the '92 agreement and
9 the FASB, but the fact that even after we went to a
10 401(h), you know, you're going to have somebody
11 hired after 1993, they're going to work 30, 40
12 years, whatever the case may be, they get X amount
13 of dollars in this fund to pay for health care, but
14 if they live to be 100 years old, guess what?
15 You're going to convert it back over. I mean, if
16 that ain't for lifetime, I don't know what is, just
17 to be -- I mean, I'm not trying to be smart about
18 it. Live to be 100, God bless, I hope I'm one of
19 them. But, you know, that's pretty lifetime to me.
20 So, you know, so it's a combination of those things.
21 That's why I believe that. I believe that's what
22 was the whole intent in '92. I'm convinced '92. I
23 mean, especially '92. I mean, shit, they had a
24 right deal, we went through a whole lot of exercise,
25 hell, for nothing. I don't mean to expound.

1 Q I want to make sure I understand the 401(h) point
2 that you're making. As I understand it, there were
3 funds set aside for new employees, people who joined
4 the company after January 1, 1993?

5 A Correct.

6 Q Which was a 401(h) plan?

7 A Which was a big concession for the Union to give up.
8 The reason we did that, for a couple reasons, one we
9 was looking at that FASB, because that's what the
10 company's concern -- we was trying to get the
11 company a little bit of what they wanted on that
12 particular piece, but we was also worried about how
13 much monies, because the conversation went like
14 this: How much monies does it take for a new hire,
15 somebody that's going to work at least 30 years, or
16 I guess it could be a 60/10 or 85 points, that's a
17 whole nother avenue you get into because they got
18 less time to put money in obviously, but I won't get
19 into all that. So how much money does it take that
20 once I'm out of there, that I can take premium;
21 because the talk at the time, the company would
22 maintain a group insurance type plan, that I could
23 take premiums out of this account, and it would pay
24 for my health insurance, okay? But how much is
25 that -- how much is it? Nobody knows how much money

1 that was. So we come up with, well, if I do this,
2 and I live to be 100 years old, guess what, you're
3 going to convert me back into company health care
4 plan. They're going to pick me up again. And, you
5 know, you're looking 30, 40 years down the road. I
6 mean, that -- that was our -- that's why I thought
7 the plant would still be there today. That's why it
8 bothers me the plant is closed, besides the fact
9 it's my home plant and I know a lot of people who
10 live there and worked there, some of them died since
11 then, took their own lives, but that's another
12 story. But that's why I believe that.

13 I truly believe, during the course of
14 negotiations over the years, you don't always get
15 what you got -- what you want, but you give and
16 take. We got a lifetime benefit. That's how I
17 believe. I know your job is to try to prove we
18 don't, I understand that, that's your job. But my
19 job is to take care of the people that entrust me to
20 take care of them, and I'm going to do that to the
21 best of my ability, and we have done that over the
22 years and we give them, so they don't have to worry
23 about it when they retire, and they're out here and
24 they don't have the best of health.

25 Q Okay.

1 A And I'm -- I shouldn't have expanded, but I did.

2 Q Okay. I appreciate that. Let me just make sure
3 that we're -- that we're precise, the record is
4 clear on this 401(h) point.

5 A Okay.

6 Q The employees of the Muncie Plant who joined before
7 January 1, 1993, remained eligible for health care
8 when they retired?

9 A Correct.

10 Q -- under the company --

11 A Correct.

12 Q Employees who joined after January 1, 1993, were
13 eligible for the 401(h) plan, and the money that we
14 put into that plan would pay for their health care
15 up until the time they were 100?

16 A Yeah, it was a matching thing.

17 Q Okay. So the 401(h) program was not -- did not
18 affect people who were already at the plant in --

19 A Well, it could have.

20 Q -- in 1992?

21 A It could have, because you could have voluntarily
22 went into that thing.

23 Q Did many people do that?

24 A I'm not aware of that. I mean, I don't know that
25 anybody did, because you also got to understand I

1 don't know how many people they actually hired after
2 that point in time. They hired a few, not for very
3 long. You might have had a few, but nobody come to
4 me and say, hey, I joined up on that, because I
5 would have told them you're crazy.

6 Q Now, the 401(h) arrangement, as I understand it, the
7 funds in the 401(h) account vested with the employee
8 after five years; is that right?

9 A I believe so. I think that's correct.

10 Q And that was explicitly stated in the agreement?

11 A I believe so. I believe so, without looking at
12 them.

13 Q Assuming that an existing employee did not opt into
14 the 401(h) plan --

15 A Okay.

16 Q -- did the 401(h) plan have any effect on the
17 existing employees or the current retirees at that
18 point?

19 A I don't believe so. I don't think so. I mean, if I
20 stayed in this program I don't know that it would.
21 I thought -- I mean, it would help the company
22 obviously with the fact -- that was the whole point
23 of it, to secure these benefits for these people and
24 in the future -- I mean, we're not just talking
25 about right now, we're -- I'm talking about 20 years

1 from now or 30 years from now, the whole goal in
2 1992 is in 2050 if we're building electric flying
3 cars, that that plant would be there producing some
4 kind of, whether it be a transmission or trans -- or
5 something that would make that thing fly, that was
6 our whole goal. And we knew by taking that FASB
7 off, that that was a biggie. I mean, I can remember
8 -- you know, I can remember Daffara -- and credits
9 to you -- credit the to bargaining committee for
10 getting that done, saying, nope, there's no more
11 argument. There's no argument.

12 Q Okay. Was there any other aspect of the 1992
13 negotiations that you thought enhanced the UAW's
14 position that the retirees, the pre-1993 employees
15 who retired have lifetime vested health care?

16 A I guess not off the top of my head. I can only say
17 that that was our goal. I mean, we went into that
18 knowing we had a group back here that was already
19 taken care of, and we had to take care of X amount
20 of people that was remaining in that plant, and then
21 also at the same time try to reduce that, because we
22 wanted the plant to stay open. I mean, you'd be
23 crazy not to. That's what we thought we was
24 achieving all that. We thought, as Daffara,
25 win/win. We want a win/win situation. We thought

1 we created a win/win situation by taking care of
2 past retirees, because they're gone, we don't have
3 to worry about them. Now we got this group, they're
4 taken care of, and as people come in that FASB
5 starts coming down, coming down, because that's what
6 the company wanted, they wanted that FASB liability
7 gone. That's how I see it and that's what I
8 believe, so --

9 Q Mr. Ailes, have you, in connection with your
10 position since 2000 as a representative of the
11 International Union, have you received any
12 instructions about -- from the International, about
13 how to negotiate retiree health care benefits?

14 A Have I? No, I pretty much know how to do that, I
15 thought. I mean, I don't know per se. They may
16 send a memo down, I may or may not pay attention to
17 it. I mean, when I go to negotiation, I've done it
18 enough I feel like I'm going to go ahead -- and I
19 have the autonomy to go in and negotiate that
20 contract. Now, obviously I'm not going to do
21 anything against any policies they may have, but
22 I -- that's a hard question for me to answer because
23 I don't want you to think I'm being flippant about
24 it, that -- you know, when I go into that thing, I
25 mean, that's what I do. So depending on the plant,

1 depending on who owns it, depending on what kind of
2 manufacturing facility it is or if it's a public
3 facility, I mean -- you know, you got to do it
4 different. I mean, public sector I got to do
5 different than what I do in private sector. Hell, I
6 got a sheriff's department I go in and negotiate
7 with them, then I got to go in and negotiate with
8 commissioners. I mean, it's just different.

9 So I don't know -- outside of looking at it
10 as vested for, you know, retirement as far as -- in
11 my plant I guess more than some of the others,
12 because some of the others are new plants, but I go
13 in with the retirees for vested, get the best
14 benefit I can for the active people and try to
15 secure their future benefits. I do that in every
16 set of negotiations I go into; some more successful
17 than others, some are already set up prior to me
18 getting there. You know, I may still try. I may
19 not be successful, but some plants are just set up
20 before I got there, they're different. They're not
21 like what plant I come out of.

22 So I just try to do the best for the people
23 that I represent. That's what I try to do. I know
24 that's a cliché, but that's really truly what I try
25 to do.

1 Q Is it -- is it your going-in assumption in every
2 situation that retiree health care benefits are
3 lifetime vested?

4 A Me personally, yes. If they've got those, okay?
5 Not every plant has -- I mean, not every plant has
6 got that. Depends when they were formed. Depends
7 on -- you know, I mean, there's a lot of -- not
8 every plant has been around since 1937 or before,
9 like my home plant, BorgWarner, been around before
10 1937, so it varies. But yeah, when we go out,
11 whatever retirees got, I consider that to be vested.
12 If nothing else, I believe it for the heart, sweat
13 and tears and amount of work that they put in for
14 that company. That's what I believe.

15 Q Do you do anything typically, when you're going into
16 a negotiation -- let's put aside BorgWarner for a
17 minute. When you go into a negotiation for a plant
18 that you haven't previously negotiated for, do you
19 do anything to confirm that assumption, that the
20 retiree health benefits are lifetime vested?

21 A Well, I get their agreements and I look at them.
22 Then I converse with the Local Union.

23 Q And what do you look for in the agreements to
24 determine whether the retiree health benefits are
25 lifetime?

1 A One, do they have them. Do they have health
2 benefits. All right. I look at language. I look
3 at how it's set up, I guess -- I'm not answering you
4 to what you want to hear I don't guess, but I go
5 into it -- they got to convince me it's not vested.
6 I guess I'll put it that's the best way. For the
7 ones that have it, I go in thinking it's vested.
8 And if somebody proves different, unless there's
9 language that says we -- absolutely we can tell you
10 tomorrow, I don't know, I'm being (sic) exaggerating
11 about it, but this is how I go into it, right, wrong
12 or indifferent.

13 Q Can you think of any instances in which people have
14 persuaded you in negotiations you've been involved
15 in, in which you've been persuaded that the retiree
16 health care benefits were not vested?

17 A No. To be honest with you, I really haven't had
18 to have that to the level we're at with this, I
19 guess knock on wood, I reckon, to have to have that
20 fight.

21 Q What sort of businesses -- and obviously BorgWarner
22 is a Tier One auto supplier, what other sorts of
23 businesses do you -- are you involved with
24 negotiating with, in Region 3?

25 A Man, it's all over the map. I mean, insulation, gas

1 lines, injection molding, bumpers, valve -- I
2 mean -- valve covers, gasoline caps -- not so much
3 anymore because they -- the newer vehicles don't
4 have gasoline caps. A lot of times I'm thinking I'm
5 forgetting to put it on, because it's not there
6 anymore. Just a variety of different things. The
7 sheriff's department, the jail. If you're ever in
8 Delaware County and you get thrown in jail, give me
9 a call, I can help you out there.

10 Q I'll keep that in mind.

11 A Used to know people --

12 Q Can you do anything for me in Fairfax, Virginia?

13 A I can't get you there, but if you're in Delaware
14 County, you run into a problem, if we can't get you
15 out, we'll make your stay a real pleasure.

16 Q I thought I was real close the other day. The -- do
17 you -- do you negotiate with any other Tier One auto
18 parts suppliers?

19 A Oh, I'm sure I do. It's been awhile. I mean, it's
20 not my primary thing now, so -- maybe -- maybe AMCO
21 Steel, maybe. I don't know. BorgWarner was my
22 biggest one, so I mean -- off the top of my head, I
23 can't think of who it would be.

24 Q And just to reiterate, I apologize if I'm repeating
25 myself, but can you think of any instance -- you say

1 you go into negotiations five or six times a year
2 personally, if I recall correctly?

3 A Yeah.

4 Q You've been doing this now for 11, 12 years?

5 A Yeah.

6 Q So that's 50 or 60 negotiations you've been involved
7 in. That's a lot. Can you -- can you think of any
8 instance in which you have gone in and seen
9 something that convinced you that the retiree health
10 benefits were not lifetime vested?

11 A I can't say that I have or I can't recall it, just
12 to be honest with you.

13 Q As you sit here today, can you think of something
14 that you could see that would persuade you that the
15 benefits are not lifetime vested?

16 A That's hard to answer. I mean, if I saw it, I'd try
17 to change it. I would.

18 Q Are you -- do you, as a matter of policy, seek
19 contractual provisions in the health agreements that
20 would make clear that the benefits are lifetime
21 vested?

22 A Would I seek that? Absolutely. Absolutely. But it
23 depends on what the language says. I mean, it may
24 already be there. I don't know. It's -- I don'
25 know how to answer that question to be honest with

1 you, because, you know, sometimes things are best
2 left alone until you really have to take it on.
3 Just like with this here, until this fight. It's
4 just the way it was. That's the way it is. And now
5 we got somebody trying to say it's not.

6 MR. BURCHFIELD: I'd ask the reporter to
7 mark as Exhibit 28 a document dated April 23, 1984.

8 (Ailes Deposition Exhibit Number 28 was
9 marked for identification.)

10 BY MR. BURCHFIELD:

11 Q Mr. Ailes, I've handed you a document dated April
12 23, 1984 from a Mr. Owen Bieber to the International
13 Executive Board. It's been marked as Ailes Exhibit
14 28. Take a minute and look at that document. Let
15 me know if you've seen it before.

16 A (Reviewing.) I probably -- I mean, I'm assuming I
17 have, I guess. Looks like might be some kind of
18 administrative letter -- is this an administrative
19 letter, do you know?

20 Q I'm sorry?

21 A I'm just trying to -- I mean, I know who it's from,
22 but I just don't know if it's in the form of an
23 administrative letter.

24 Q Let me ask you to look at the third paragraph on the
25 first page which says, "Many of our labor agreements

1 contain ambiguous language as to the duration of
2 retiree health and life insurance benefits. We do
3 not recommend that UAW bargaining representatives
4 attempt to clarify this language. The potential
5 value of any clarification is not worth the risks if
6 we were unsuccessful and create bad bargaining
7 history which can be used against us at a later day.
8 Any discussion during negotiations may be evidence
9 of the party's intent as to the duration of the
10 retirees benefits."

11 Do you see that?

12 A Yes.

13 Q Do you recall being instructed either orally or in
14 writing by persons at the International Union to
15 avoid efforts to obtain clear language about the
16 vesting of retiree health benefits?

17 A I don't believe anybody told me that. I mean, I --
18 like I said, I think I've seen this, but I don't
19 recall anybody saying specifically -- because when I
20 go into bargaining, I go into bargaining. My word
21 is my word. I mean, I'm not going to try to
22 bullshit anybody. I'm going to tell you straight
23 up, if I come after something I'll tell you that. I
24 hope they do the same to me. I mean, it is what it
25 is, I guess. But I don't remember anybody -- if

1 you're asking me did somebody specifically give me
2 instructions to do that, the answer's no.

3 Q Okay. Is it your intention, in collective
4 bargaining negotiations, when you're involved in
5 them, to try to increase the benefits available to
6 -- the health benefits available to retirees, if you
7 can?

8 A Well, I guess that'd be the goal, but not always is
9 that possible. I mean, if you can enhance
10 something, obviously you'd be crazy not to do if
11 it's not to the detriment of anybody. But at the
12 same time I understand that -- I still keep going
13 back to -- and you'll get tired of hearing it -- at
14 least they should understand, when they go out, they
15 went out with -- I mean, somebody always wants
16 improvements; doesn't necessarily mean you can get
17 them, doesn't necessarily mean the company wants to
18 give them. As a matter of fact, 2000 when it was
19 even brought up, everyone said, you know, if we're
20 going to talk about retirees, there's stuff we want
21 to talk about too. And everybody decided, nope.
22 So, I mean, sometimes they get enhanced benefits by
23 what you do active, you know, whether or not it's
24 somebody opened up a clinic that wasn't there, you
25 know, and if they say come over, come over. Excuse

1 me, I'm getting --

2 Q Do you believe there is -- there is any conflict
3 between the interest of active employees and
4 retirees in the context of collective bargaining
5 negotiations; in other words, do you believe that by
6 helping one, you are going to disadvantage the
7 other?

8 A No, I don't.

9 Q Do you -- how -- what is -- what is the -- what is
10 the approach -- what is your approach in collective
11 bargaining negotiations with regard to retiree
12 health care, in terms of taking into account new
13 government programs like Medicare Part D?

14 A I guess it varies from contract to contract. I
15 guess I don't -- I guess I don't know how to answer
16 that question.

17 Q Let me ask you it a slightly different way.
18 Medicare Part D, the prescription drug benefit,
19 became effective January 1, 2006, sound right?

20 A Yeah, somewhere -- yeah, somewhere.

21 Q And the -- many of the existing retirees at
22 BorgWarner, for example, if not all of them, use
23 prescription drugs on occasion?

24 A (Gesturing.)

25 Q Is it the UAW's position that the -- that the

1 retirees should take full advantage of Medicare Part
2 D?

3 A To be honest, I don't know if I can answer that. I
4 don't know if it's a position. I just don't know if
5 it's a position. I'll put it that way, I guess.

6 Q In the agreements that you're familiar with
7 regarding retiree health coverage, does -- do -- do
8 any of them explicitly require retirees to take
9 advantage of Medicare Part D prior to seeking
10 coverage under the employer plan?

11 A I'm sure they're out there. I mean, but I've seen
12 it the opposite too where because the company got an
13 advantage by the employee not going that route, they
14 actually wanted them to go the other way and to go
15 to K -- or go through that plan I should say, not
16 the company, because they're not a pharmacy of
17 course.

18 Q How would it be an advantage to the company if
19 they --

20 A Because they got some kind of X amount of dollars,
21 and I can't -- you can't hold me to it. I just
22 remember the talk at one time, and I think it was
23 BorgWarner. BorgWarner was getting X amount of
24 dollars for if the retirees went under this plan,
25 under the prescription.

1 Q Some sort of tax advantage?

2 A It might have been it. It didn't disadvantage, so
3 we weren't -- it's one, if it didn't disadvantage
4 them. We weren't ever out to hurt the company. So,
5 I mean, if you could help them and still not take
6 anything away from the people you're negotiating
7 for, there's nothing wrong with that. If it makes
8 them stronger, great. Now obviously I can get into
9 personal opinion, what I think about trying to make
10 a company stronger, sometimes I don't think it
11 matters. But obviously that's your goal, you know.

12 Q Do you recall if the BorgWarner plan required
13 retirees to take advantage of Medicare Part D before
14 seeking benefits under the -- under the BorgWarner
15 plan?

16 A I don't know. Off the top of my head, I want to say
17 it does, but I couldn't swear to it without going
18 through the documents.

19 Q In your negotiations on behalf of UAW members, have
20 there been instances in which -- in which you have
21 agreed to -- that the -- that retirees can pay
22 premiums for their health care in some amount?

23 MR. MACEY: Is the question limited to
24 BorgWarner or are you talking generally?

25 MR. BURCHFIELD: More generally.

1 THE WITNESS: Not me. I mean, not that I
2 can recall.

3 BY MR. BURCHFIELD:

4 Q Now obviously this -- obviously you prefer to have
5 -- presumably you prefer the employers to agree to
6 fully pay health care for the retirees. But have
7 there been, in recent times, situations in which
8 collective bargaining has led the UAW to accept the
9 payment of pre-minimums by retirees for their health
10 care?

11 A I guess the only one I can recall would be
12 BorgWarner in 2005 for future people.

13 Q And you're not aware of any other group of retirees
14 that you've negotiated for that pays premiums?

15 A Not off the top of my head I'm not. I mean, I'm not
16 saying it's not out there, but I -- it's just not --
17 it's not coming into my head right now.

18 Q How about co-pays, in the BorgWarner program, if
19 you're in the PPO there's a co-pay of --

20 A Not until -- that didn't start until 2005.

21 Q But at the present time, there -- well, at -- in
22 2005, there was a co-pay of what, ten percent for
23 the PPO?

24 A I don't recall what that was, to be honest with
25 you.

1 Q Whatever it was.

2 A Whatever it was.

3 Q And then out of network there was somewhat larger
4 percentage co-pay for medical care, do you recall
5 that?

6 A When you're talking co-pay, you're talking -- if
7 you're talking deductibles and stop losses versus
8 premium co-pay. I'm just trying to make sure I
9 understand the terminology.

10 Q Yeah, I apologize. I moved away from the issue of
11 premium. Now I'm talking about co-pays and
12 deductibles. You are aware that there were
13 co-pays and deductibles in the BorgWarner program?

14 A Yes. Like the 80/20, yeah, I understand that.

15 Q Is that typical in current retiree health care, that
16 you -- in negotiations that you participate in?

17 A Probably the same, probably is.

18 Q What about -- what's the range of co-pays,
19 percentage of co-pays that you've seen in your
20 negotiations that UAW has agreed to?

21 A I really don't have a good feel for that. I mean,
22 it's probably all over the map depending on, once
23 again, the company, what they're manufacturing,
24 where they're located. I mean, there's just a lot
25 of things involved in that. So I mean, I don't want

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1 to say I think it's between 70 or 60 or you know --

2 I just don't know. I really don't know.

3 Q As you sit here today, can you remember what's the
4 lowest employer percentage that you can think of; is
5 it 60?

6 A Employer percentage or employee?

7 Q Employer percentage. 60 for the employer, would be
8 40 percent for the retiree.

9 A The lowest? Probably out of network, 70. I had a
10 lot of hundred percent. I mean -- 100 percent
11 employer pay is what I mean.

12 Q Yeah, what about -- what about deductibles, what is
13 the largest deductible for prescription drugs that
14 you recall at the present time?

15 MR. RADTKE: Are you asking for retirees or
16 active?

17 MR. BURCHFIELD: For retirees.

18 THE WITNESS: I don't know. Maybe \$15.

19 BY MR. BURCHFIELD:

20 Q Is that for generic or is that for branded?

21 A Maybe 15 for brand and ten -- five for generic. I
22 mean, it just depends on the plan.

23 Q In your experience, has that been going up over the
24 years?

25 A Maybe slightly.

1 Q Is it -- is -- do -- are you familiar with -- with
2 health plans that require retirees to obtain their
3 prescriptions by mail?

4 A Yes.

5 Q Is that becoming more common?

6 A Yes and no. I mean, it was and then it didn't. I
7 mean, some companies even though they got it, they
8 drop it, because there's not an advantage sometimes.

9 Q Is the -- is the UAW willing in some circumstances
10 to accept a requirement for mail order
11 prescriptions?

12 A Oh, I'm sure there are. Depends on the
13 circumstances, again, I mean...

14 Q Have you run into situations in which the UAW has
15 agreed to dollar caps on the employee -- employer
16 contributions to retiree health care?

17 A I don't recall, I mean, off the top of my head. I
18 want to clarify the question you had before. If
19 it's an advantage for a retiree to get a 90-day
20 supply with a less amount of money out of pocket,
21 you're going to look at it. I mean, you got to look
22 at it, if they're not disadvantaged.

23 See, a lot of the questions you're asking
24 me, you got to look at is it going to disadvantage
25 the person, whether it be active or is it going to

1 disadvantage the retiree. I mean, that's what you
2 look at. And if it doesn't, sometimes you can kill
3 two birds with one stone, I guess.

4 Q Well, do you -- are you aware of situations in which
5 the UAW has agreed to prescription by mail programs
6 that strongly incentivize the retirees to get their
7 prescription by mail?

8 A Well, I'm sure they're out there, yes. I'm sure
9 they're out there. So is the opposite way.

10 Q Are you familiar with escalator provisions,
11 percentage escalator provisions for deductibles and
12 stop loss?

13 A Something similar to the '92 agreement?

14 Q Yeah.

15 A Once again, I'm sure they're out there, but I'm
16 not -- I couldn't cite one to you right now. The
17 only one I'm most familiar is obviously BorgWarner,
18 because that's where I came from and was part of
19 that negotiation.

20 Q Are you aware of any retiree health programs that
21 have annual escalators for the existing retirees?

22 A Like I said, I couldn't cite you one off the top of
23 my head. I mean, I'm -- the questions you're asking
24 me, I'm assuming -- there's a wide range of things
25 out there. So, I mean -- but to say that I

1 specifically am aware, I can't answer that to say
2 yes, I can cite this company, they do it. I
3 couldn't do that. But I don't want you to think I'm
4 trying to lie to you and say that they don't exist,
5 because I'm sure somewhere they do. I mean, just
6 like anything.

7 Q No, I appreciate that. And I -- you know, if you
8 don't know, then -- then that's -- that's a fine
9 answer.

10 So, have you had any involvement in
11 employer proposals to do health savings accounts for
12 retirees?

13 A I have not. BorgWarner tried it, and I wasn't for
14 that at the time.

15 Q And just for my edification, do you distinguish
16 between the type of 401(h) plan that was agreed
17 to --

18 A Yeah, I guess I do because I don't -- I don't --

19 Q Okay.

20 A I mean, I guess you could -- see, now we're going to
21 get in semantics, words, I guess. No, I understand
22 the 401(h) clearly. I mean, I guess you could look
23 at it as the health savings account, I guess. I
24 just don't look at that the same way as I do the
25 HSAs. And there's another terminology. I mean, we

1 can go through the different letters they got for
2 each one. You know, they got 100 of them, FLEX
3 accounts.

4 Q I got 100 health care lawyers in my law firm that
5 struggle with these issues every day, so I'm not one
6 of them. So how do you distinguish between a health
7 savings account and a 401(h) account, just so we're
8 talking on the same plane?

9 A Well, some of it is paper money. With the 401(h)
10 you got definite amounts of money going into an
11 account, all right? And they can be used for a
12 premium. Some of these -- my understanding is the
13 other ones, like the HSAs, it's not really money is
14 going into an account, there's an allotment they
15 say. And if you've got, let's say, a procedure
16 that's done, they write a check for that amount of
17 money, it's not like you have money in an account
18 that you can take with you upon leaving. A 401(h)
19 you can. 401(h), like a 401(k), if I decide I work
20 ten years or five years or six years under 401(h), I
21 can leave, the money is portable, where I don't
22 believe that's that way with SH (sic) -- I'm not an
23 expert on those kind of accounts, I'll just be real
24 honest, what I've heard of them, they're shit. But
25 that's just my opinion.

1 Q And what -- and have you been in -- other than
2 BorgWarner, have you been in situations where the
3 UAW has entered agreements that gave retirees 401(h)
4 accounts?

5 A I have not.

6 Q Do you know of other situations in which UAW
7 negotiators have agreed to that?

8 A Not a 401(h), I mean, not that I recall. I mean, I
9 just don't.

10 MR. BURCHFIELD: Okay. Let me make -- let
11 me ask the reporter to mark as our next Exhibit,
12 which is Number 29, a document entitled, "2002
13 national retiree and active health care agreement
14 between the UAW and Barnes Group."

15 (Ailes Deposition Exhibit Number 29 was
16 marked for identification.)

17 BY MR. BURCHFIELD:

18 Q Mr. Ailes, have you ever been involved in collective
19 bargaining negotiations with the Barnes Group?

20 A No, sir.

21 Q Let me ask you to look at page 6 of this agreement.
22 And I'm looking at paragraph 5.2 which says, "With
23 respect to any individual who the UAW represents or
24 represented for purposes of collective bargaining
25 and who retired or becomes retired from employment

1 by Barnes at Barnes' Associated Spring Plants in
2 Bristol, Connecticut; Corry, Pennsylvania; Dayton,
3 Ohio; or Saline, Michigan after January 1, 1985,
4 Barnes may not unilaterally make any material change
5 in retiree health care benefits or to the cost
6 thereof after such individual retires. This
7 paragraph 5.2 shall survive the expiration of this
8 agreement and can only be modified by the mutual
9 agreement of Barnes and the UAW."

10 Do you see that?

11 A Yes.

12 Q Did the UAW propose language of that -- of
13 substantively the similar language to BorgWarner
14 during any of the negotiations you participated in?

15 A I can't -- I don't know. I mean, I can't say
16 absolute.

17 Q At least as you sit here now, you don't recall
18 any?

19 A No, I mean, didn't have to. We already had it.

20 Q And you testified before about where you believe
21 that language existed. Is there anything you want
22 to add to that prior testimony right now?

23 A I guess not right now.

24 Q Okay.

25 A I may think of something.

1 Q Okay. If you do, let me know.

2 A I will do that.

3 MR. BURCHFIELD: Okay. Let's take five
4 minutes and I may be able to wrap up pretty quickly
5 thereafter.

6 (Off the record at 3:56 p.m.)

7 (Back on the record at 4:08 p.m.)

8 BY MR. BURCHFIELD:

9 Q Okay. Mr. Ailes, I think we're just about done.

10 The pamphlet that you required -- let me
11 ask it this way: Does the UAW ever publish
12 pamphlets for retirees to discuss their pensions and
13 welfare benefits?

14 A I don't know.

15 Q Is there -- is there any possibility that the
16 document you're recalling, the pamphlet you're
17 recalling that talks about continued retiree health
18 care coverage, would have been a document that was
19 submitted to retirees by the UAW?

20 A Absolutely not. It was a company document. I
21 remember it was a company document.

22 Q Okay. In the -- you were -- you were at the Muncie
23 Plant during 1989 when the employees went out on
24 strike, right?

25 A That's correct.

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1 Q Did you -- do you have any knowledge about who paid
2 for the health care benefits of the then existing
3 retirees during that strike?

4 A No, I don't. I really don't know that. I don't
5 know the answer to that.

6 MR. BURCHFIELD: Okay. That's -- that's
7 all I have, subject to discussion we had earlier
8 about --

9 MR. MACEY: Number nine, a witness for
10 number nine. Okay.

11 MR. RADTKE: Thank you.

12 (Whereupon, at 4:10 p.m., the
13 deposition of MICHAEL AILES
14 was concluded.)

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Capital Reporting Company
Ailes, Michael 12-16-2011

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1 CERTIFICATE OF NOTARY PUBLIC

2 I, ~~QUENTINA ROCHELLE SNOWDEN~~, the officer before
3 whom the foregoing deposition was taken, do hereby certify
4 that the witness whose testimony appears in the foregoing
5 deposition was duly sworn by me; that the testimony of
6 said witness was taken by me in stenotype and thereafter
7 reduced to typewriting under my direction; that said
8 deposition is a true record of the testimony given by said
9 witness; that I am neither counsel for, related to, nor
10 employed by any of the parties to the action in which this
11 deposition was taken; and, further, that I am not a
12 relative or employee of any counsel or attorney employed
13 by the parties hereto, nor financially or otherwise
14 interested in the outcome of this action.

15

16

17

18

19

20

Quentina R. Snowden

QUENTINA ROCHELLE SNOWDEN, CSR
Notary Public for
Genesee County, Michigan

21 My commission expires: January 4, 2012

22 CSR No.: 5519

23

24

25

1 Capital Reporting Company
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2 Washington, DC 20036
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3

4 E R R A T A S H E E T

5 Case Name: WILLARD L. SLOAN, ET AL V
BORGWARNER, INC., ET AL

6 Witness Name: MICHAEL AILES

7 Deposition Date: DECEMBER 16, 2011
8

9 Page No. Line No. Change/Reason for Change

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25 _____
Date

Signature

1 A C K N O W L E D G E M E N T O F D E P O N E N T

2

3 I, MICHAEL AILES, do hereby acknowledge I
4 have read and examined the foregoing pages of
5 testimony, and the same is a true, correct and
6 complete transcription of the testimony given by me,
7 and any changes or corrections, if any, appear
8 in the attached errata sheet signed by me.

9

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21 _____
Date

MICHAEL AILES

22

23

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25

Capital Reporting Company
Ailes, Michael 12-16-2011

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1 MACEY, SWANSON AND ALLMAN
Barry A. Macey, Esquire
2 445 N. Pennsylvania Street
Suite 401
3 Indianapolis, Indiana 46204

4 IN RE: WILLARD L. SLOAN, ET AL V BORGWARNER, INC., ET AL

5 Dear Mr. Macey:

6 Enclosed please find your copy of the
7 deposition of MICHAEL AILES, along with the
8 errata sheet and original signature page. As
9 agreed, you will be responsible for contacting
10 the witness regarding signature.

11 Within 28 days of November 29, 2011, please
12 forward errata sheet and original signed signature
13 page to counsel for Plaintiff, Barry A. Macey.

14 If you have any questions, please do not
15 hesitate to call. Thank you.

16

17 Yours,

18 
19 Quentina R. Snowden, CSR

20 CSR No. 5519

21 Reporter/Notary

22 cc: Bobby R. Burchfield, Esq. and David R. Radtke, Esq.

23

24

25